

THIRTEENTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF VALENCIA

MALCOLM ("BUDDY") S. MAJOR, JR.;
MAJOR LAND AND CATTLE CO.; and
THREE BAR LAND COMPANY, LLC,
Plaintiffs;

v.

No. D-1314-CV-08-72

GARY K. KING, Attorney General of New Mexico;
RON CURRY, Secretary of the New Mexico Environment Department; and
HIGHLAND MEADOWS ESTATES MUTUAL DOMESTIC WATER
CONSUMERS AND SEWAGE WORKS ASSOCIATION,
Defendants.

STATE OF NEW MEXICO, *ex rel.*
GARY K. KING, ATTORNEY GENERAL; and
RON CURRY, in his official capacity as
Secretary of the New Mexico Environment Department;
Counterclaimants;

v.

MALCOLM S. MAJOR, JR.,
a/k/a, M.S. MAJOR, JR.,
a/k/a, M.S. "Buddy" MAJOR, JR.,
d/b/a, MAJOR LAND AND CATTLE CO.,
d/b/a, BUDDY MAJOR LAND AND CATTLE CO.,
d/b/a, MAJOR LAND CO.;
THREE BAR LAND COMPANY, LLC; and
ANABEL TREVIÑO, f/k/a, ANABEL PETERS,
Counterdefendants.

**ANSWER TO SECOND AMENDED COMPLAINT FOR DECLARATORY
JUDGMENT AND COUNTERCLAIMS**

**ANSWER OF DEFENDANTS GARY K. KING AND RON CURRY
TO SECOND AMENDED COMPLAINT FOR DECLARATORY JUDGMENT**

COME NOW DEFENDANT GARY K. KING, Attorney General for the State of
New Mexico, by Assistant Attorneys General William S. Keller and Brian Harris, and
DEFENDANT RON CURRY, Secretary of the New Mexico Environment Department,

by Department General Counsel Tracy M. Hughes and Assistant General Counsel Carol M. Parker, and hereby enter their Answer to Plaintiffs' Second Amended Complaint.

1. As to the allegations contained in paragraph 1, Defendants admit the same except with regard to the reference to the "First" Amended Complaint in the last sentence, which they deny.

2. As to the allegations contained in paragraph 2, Defendants are without information or knowledge sufficient to form a belief, and, therefore, deny the same.

3. As to the allegations contained in paragraph 3, Defendants admit that Gary King is the Attorney General of the State of New Mexico, that he has certain powers and authorities under NMSA 1978, § 8-5-1 *et seq.*, NMSA 1978, § 57-12-1 *et seq.* and NMSA 1978, § 57-15-1 *et seq.* Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations contained in ¶ 3, and, therefore, deny the same.

4. As to the allegations contained in paragraph 4, Defendants admit that Ron Curry is the Secretary of the New Mexico Environment Department and that he has certain powers and authorities under state law with regard to drinking water, including, but not limited to, the Environmental Improvement Act, and New Mexico Environment Department Drinking Water Regulations. Defendant Curry admits that the state laws cited by Plaintiffs are at issue in this lawsuit; however, Defendant Curry affirmatively states that other laws may become relevant as litigation proceeds. Defendants deny that Secretary Curry brings legal actions under the Safe Drinking Water Act, ("SDWA"), 42 U.S.C. § 300f to 300j-26 (2003). Defendants state affirmatively that Secretary Curry, acting through the New Mexico Environment Department, has primary enforcement

responsibility for public water systems within the State of New Mexico. Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations contained in ¶ 4, and, therefore, deny the same.

5. As to the allegations contained in paragraph 5, Defendants deny that Plaintiffs have correctly identified the “Association” and affirmatively state that its correct title is the Highland Meadows Estates Mutual Domestic Water Consumers and Sewage Works Association (“Association”), that the Association is the successor of an organization known as the Highland Meadows Estates Water Cooperative Association (“Cooperative”), and that the Association is a mutual domestic water consumers association organized pursuant to the New Mexico Sanitary Projects Act, NMSA 1978, § 3-29-1 *et seq.* Defendants admit that the Association is the owner of a certain water system, deny it owns any “shared well facilities” conveyed to it by any of the Plaintiffs at any time, and state affirmatively that what Plaintiffs conveyed was a public water supply system at the time it was conveyed and that the water system continues to be a public water supply system today.

6. Without waiving any defenses of sovereign immunity, as to the allegations contained in paragraph 6, Defendants admit that NMSA 1978, § 44-6-13 provides that the State of New Mexico or any official thereof may be sued and declaratory judgment entered when the rights, status or other legal relations of the parties call for a construction of the constitution of the State of New Mexico, the constitution of the United States, or any of the laws of the State of New Mexico or the United States, or any statute thereof. Defendants deny the remaining allegations.

7. As to the allegations contained in paragraph 7, Defendants deny that the

Court has subject matter jurisdiction over Plaintiffs' claims under the Declaratory Judgment Act, but admit that venue in Valencia County would be proper if there were subject matter jurisdiction over those claims.

8. As to the allegations contained in paragraph 8, Defendants admit that Plaintiffs do not seek monetary damages. Defendants deny that Defendants have engaged in repeated, ongoing and unlawful violation of rights afforded Plaintiffs by the United States and New Mexico constitutions. Defendants are without information or knowledge sufficient to form a belief as to the remaining allegations, and, therefore, deny the same.

9. As to the allegations contained in paragraph 9, Defendants are without information or knowledge sufficient to form a belief as to these allegations, and, therefore, deny the same.

10. As to the allegations contained in paragraph 10, Defendants deny the same. Defendants affirmatively state that the entity incorporated on April 13, 1971 is correctly described in the Counterclaims which follow this Answer at Paragraph 56.

11. As to the allegations contained in paragraph 11, Defendants are without information or knowledge sufficient to form a belief as to their veracity, and, therefore, deny the same.

12. As to the allegations contained in paragraph 12, Defendants admit that Major secured exploratory well permits from the Office of the State Engineer for wells RG-67781, RG-62813, RG-64055, RG-69297 and RG-67783 on the dates reflected on those well applications filed with the Office of the State Engineer. Defendants are without information or knowledge sufficient to form a belief as to the allegations

concerning whether Major “secured” a groundwater permit for well RG-28740 and therefore, deny same. *See* Defendants’ Counterclaims ¶¶ 55-72. Defendants state affirmatively that Major unlawfully used the five exploratory wells to supply water to purchasers of his lots in Highland Meadows Estates. *See* Defendants’ Counterclaims ¶¶ 73-78. Defendants admit that Major installed water system infrastructure that included a storage tank, chlorinator and pipelines within Highland Meadows Estates. *See* Defendants’ Counterclaims ¶ 113 and Counts I through VI. Based on Plaintiffs’ ambiguous pleading, Defendants are without knowledge or information sufficient to form a belief as to when Major is alleging he undertook the actions described in this paragraph, and, therefore, deny the same. Defendants deny the remaining allegations of paragraph 12, including the allegation that Major installed “Shared-well Facilities”, stating affirmatively that Major installed a public water supply system intended to service lots within Highland Meadows Estates that were sold by him or his businesses, including Three Bar Land Co., LLC.

13. As to the allegations contained in paragraph 13, Defendants admit that Major engaged in the sale of land parcels at Highland Meadows Estates, and that he advertised such sales in newspapers, brochures and at least one sign located on Major’s property within HME that represented lots were “with water.” Defendants deny that such activities were undertaken “sporadically.” Defendants are without knowledge or information sufficient to form as belief as to the remaining allegations, and, therefore, deny the same.

14. As to the allegations contained in paragraph 14, Defendants admit that certain shared well agreements exist. Defendants affirmatively state that those

agreements are the best evidence of what they say. Defendants deny that Plaintiffs have accurately quoted from at least some of those shared well agreements. Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations, and, therefore, deny the same. Defendants affirmatively deny that the quoted statement, if made, would have been adequate, meaningful or fully compliant with the requirements of state law.

15. As to the allegations contained in paragraph 15, Defendants admit that Major prepared a Property Report that is dated December 5, 2000. Defendants are without knowledge or information sufficient to form a belief as to when the report was actually written and therefore deny that it was written on December 5, 2000. Defendants deny that it was the only Property Report that Major prepared and deny that Major “issued” a Property Report. Defendants affirmatively deny that the quoted statement referred to as a “disclosure” was adequate, meaningful or fully compliant with the requirements of state law. Defendants deny that Major provided the Property Report to all purchasers prior to closing.

16. As to the allegations contained in paragraph 16, Defendants deny that the organization that Plaintiffs have described as the “Cooperative” in paragraph 10 took any of the actions described in paragraph 16. Defendants admit that the Public Regulation Commission issued a Certificate as Plaintiffs have alleged but deny that the Certificate pertained to the Cooperative as Plaintiffs have described it in paragraph 10 of the Second Amended Complaint. Defendants admit that the language quoted in paragraph 16 of the Second Amended Complaint is a partial quote from the Association’s Certificate of Association filed with the Public Regulation Commission. Defendants are without

knowledge or information sufficient to form a belief as to the purpose of the reorganization, and, therefore, deny the same. Defendants affirmatively state that the only Cooperative at issue in this case is as described in the Counterclaims which follow this Answer at Paragraph 80.

17. As to the allegations contained in paragraph 17, Defendants are without knowledge or information sufficient to form a belief as to the following allegations, and therefore, deny the same: there was an understanding that the community would effectively manage, repair and maintain the Shared-well Facilities for the benefit of the community; there was a request to transfer the water system from Major to the Cooperative that came from the Highland Meadows Estates community; that Major entered into the Agreement in good faith. Defendants deny that the water system was a Shared-well Facility as alleged in ¶ 17 and state affirmatively that the Agreement was void and of no effect.

17(i). As to the referenced Agreement, Defendants state that the Agreement speaks for itself and deny any characterizations inconsistent with its language. Defendants admit that the May 31, 2001 Agreement includes the language quoted in ¶ 17(i), but deny that the quotation is complete. Defendants affirmatively deny that the statement quoted in ¶ 17(i) was adequate, meaningful or fully compliant with the requirements of state law. Defendants deny that the Agreement referenced in ¶ 17(i) was attached to the Second Amended Complaint as Exhibit A and state affirmatively that the Agreement was void and of no effect.

17(ii). As to the referenced Agreement, Defendants state that the Agreement speaks for itself and deny any characterizations inconsistent with its language.

Defendants admit that the May 31, 2001 Agreement includes the language quoted in ¶ 17(ii), but deny that the statement is effective to hold harmless or to indemnify Plaintiffs Major or Major Land and Cattle Company for their wrongdoing. Defendants deny that the Agreement contained language in bold type as portrayed in the Second Amended Complaint and state affirmatively that the Agreement was void and of no effect.

17(iii). As to the referenced Agreement, Defendants state that the Agreement speaks for itself and deny any characterizations inconsistent with its language; Defendants deny that the Agreement referenced in ¶ 17(iii) was attached to the Second Amended Complaint as Exhibit A and state affirmatively that the Agreement was void and of no effect.

17(iv). As to the referenced Agreement, Defendants state that the Agreement speaks for itself and deny any characterizations inconsistent with its language; Defendants affirmatively deny that the statement quoted in ¶ 17(iv) was adequate, meaningful or fully compliant with the requirements of state law. Defendants deny that the Agreement referenced in ¶ 17(iv) was attached to the Second Amended Complaint as Exhibit A and state affirmatively that the Agreement was void and of no effect.

Unnumbered Paragraph between ¶ 17(iv) and ¶ 17(a). Defendants deny that Major transferred anything by the Quitclaim Deed and Bill of Sale, dated August 27, 2001 and state affirmatively that his attempt to do so was void and of no effect; Defendants deny that Major has had no ownership interest in or responsibility for the water system facilities at Highland Meadows and state affirmatively that Major continued to provide water to the Association from at least one well that he had not attempted to transfer to the Association. Defendants deny that the water system was composed of

Shared-well Facilities. Defendants further state that Major has attempted to influence, manipulate or control the actions of the Association or the members of its board of directors to his business advantage since transferring ownership; Defendants deny that the Agreement, Quitclaim Deed and Bill of Sale referenced in the Unnumbered Paragraph between ¶ 17(iv) and ¶17(a) was attached to the Second Amended Complaint as Exhibit A.

17(a). As to the Association's counterclaim, Defendants state that the counterclaim speaks for itself and deny any characterizations inconsistent with its language.

18. As to the allegations contained in paragraph 18, Defendants deny the same.

19. As to the allegations contained in paragraph 19, Defendants admit that the New Mexico Unfair Practices Act prohibits unfair or deceptive trade practices, and that § 57-12-8(B) prohibits such practices in the sale of unimproved real estate. Defendants deny that the definition of “unfair or deceptive trade practice” as stated by Plaintiffs in the second sentence of ¶ 19 is a complete or accurate statement of the definition of the term as stated at NMSA 1978, § 57-12-2(D), or that it is the only definitional language in the UPA applicable to a transaction involving unfair, deceptive or unconscionable business practices in the course of the sale of unimproved real estate.

20. As to the allegations contained in paragraph 20, Defendants respond by noting that the paragraph purports to be a statement or summary of the law and not an allegation of fact. Defendants are not required to respond to non-factual allegations.

Without waiving the foregoing objection, Defendants admit that ¶ 20 summarizes and characterizes portions of the definition of false advertising as stated in NMSA 1978, § 57-15-2 (1965). Defendants deny that the definition is a complete and accurate quotation of § 57-15-2, and deny the remaining allegations of ¶ 20.

21. As to the allegations contained in paragraph 21, Defendants respond by noting that the paragraph purports to be a statement or summary of the law and not an allegation of fact. Defendants are not required to respond to non-factual allegations.

Without waiving the foregoing objection, Defendants deny that the New Mexico Environment Department enforces the SDWA and deny the final three sentences, beginning with “[i]t is undisputed....” Defendants admit the remaining allegations of ¶ 21.

22. As to the allegations contained in paragraph 22, Defendants deny same, and state affirmatively that Secretary Curry ordered the Association to suspend new connections until it had come into compliance with certain requirements of the Sanitary Projects Act. Defendants state affirmatively that Major had actual knowledge of the order to suspend additional connections.

23. As to the allegations contained in paragraph 23, Defendants admit that: on November 16, 2006, Assistant General Counsel for the New Mexico Environment Department, Drinking Water Bureau, filed a complaint against Major with the Consumer Protection Division of the New Mexico Attorney General’s Office. Defendants admit further that the letter of complaint included the following (not an inclusive list of the Department’s statements in the letter of complaint): that the system that Major conveyed to the Cooperative in 2001 was substandard and out of compliance with applicable laws

and regulations; that the water was undrinkable due to bad taste and very high levels of sulfates, dissolved solids and hardness; that Major admitted in conversation that it was undrinkable; that Major failed to adequately disclose to purchasers of lots within Highland Meadows Estates the problems or deficiencies with the water system, water quality or the fact that wells serving the system may not have been “authorized” by the State Engineer to divert water; that people bought lots from Major without knowledge of the water-related problems in Highland Meadows Estates. Defendants admit that the Department’s letter of complaint raised issues of Major’s failure to adequately disclose material facts and possible false advertising and violations of the Unfair Practices Act, depending on all of the facts. Defendants deny that the system was a “shared-well facility,” and deny all remaining allegations.

24. As to the allegations contained in paragraph 24, Defendants admit the same, except that they deny that there was any statement concerning a “pending investigation.”

24(a). As to the allegations contained in paragraph 24(a), Defendants admit that they filed counterclaims. Defendants further admit that Counts VII, VIII, XIII and XV arise from the provision of water service within Highland Meadows Estates before and after the putative transfer of infrastructure and water rights under the Contracts but deny that Counterclaim Counts I through VI inclusive arise from the provision of water service.

25. As to the allegations contained in paragraph 25, Defendants are without knowledge or information sufficient to form a belief, and, therefore, deny the same.

26. As to the allegations contained in paragraph 26, Defendants deny that there is an actual controversy within the meaning of the Declaratory Judgment Act as framed by Major and over which this Court has subject matter jurisdiction. Defendants deny further the remaining allegations of ¶ 26 except as framed in Defendants' Counterclaims.

27. As to the allegations contained in paragraph 27, Defendants admit that they met with the first of Major's three sets of attorneys in this case without Major being present on January 25, 2007, that Major and his attorney met in February or March 2007 with Defendant Attorney General directly, and that Defendants King and Curry met with Major and his second attorney on August 31, 2007, to discuss resolution of the case. Defendants state affirmatively that following both of the first two meetings Major refused Defendant Attorney General's request to stop selling lots until the parties drafted a mutually acceptable disclosure concerning the water problems at Highland Meadows Estates. Defendants state affirmatively that Major's general response to their concerns was "I didn't do anything wrong." Defendants admit that the parties were unable to reach a resolution. Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegation that Major made a good faith attempt to resolve the issues through negotiations, and, therefore, deny the same.

28. As to the allegations contained in paragraph 28, Defendants deny that this controversy, as framed by the Second Amended Complaint, is ripe for adjudication or that this Court has subject matter jurisdiction over Plaintiffs' claims.

29. Defendants reallege the foregoing answers and responses herein.

30. As to the allegations contained in paragraph 30, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations, and, therefore, deny the same.

WHEREFORE, Defendants pray for dismissal with prejudice.

31. Defendants reallege the foregoing answers and responses herein.

32. As to the allegations contained in paragraph 32, Defendants admit that they have constitutional and statutory duties including but not limited to enforcing state laws and regulations, avoiding “selective prosecution” of citizens as that term has been defined by state and federal courts, and acting without interference with citizens’ freedom to contract as that term has been interpreted by state and federal courts. Defendants deny all remaining allegations, deny that their actions in terms of Major have been “unfair” or have constituted unlawful “selective prosecution” as that term has been defined by state and federal courts, or that they have interfered with Major’s freedom to contract as that term has been defined by state and federal courts. Defendants state affirmatively that no constitutional, statutory or regulatory provision allows any person to engage in unfair, deceptive or unconscionable business practices including, but not limited to, unfair, deceptive or false advertising or sales practices. Defendants state affirmatively that the State of New Mexico has a right under federal and state law to require compliance with laws enacted to protect the safety of the state’s drinking water supply and to require that water be diverted lawfully in compliance with requirements of the Office of State Engineer.

33. As to the allegations contained in paragraph 33, Defendants deny the same.

34. As to the allegations contained in paragraph 34, Defendants deny the same.

WHEREFORE, Defendants pray for dismissal with prejudice.

35. Defendants reallege the foregoing answers and responses herein.

36. Defendants state that ¶ 36 does not assert a claim against the State Defendants and therefore requires no response on their part. Notwithstanding that objection, Defendants respond to ¶ 36 as follows: as to the allegations contained in ¶ 36, paragraph 36 asserts a legal conclusion to which Defendants are not required to respond. As to the referenced Agreement, Defendants state further that the Agreement speaks for itself and deny any characterizations inconsistent with its language. Defendants further admit that Counts VII, VIII, XIII and XV of the Counterclaims arise from the provision of water service. Defendants deny that the Agreement referenced in ¶ 36 is effective to hold harmless or to indemnify Plaintiff Major or Major Land and Cattle Company for their wrongdoing; Defendants state affirmatively that the Agreement was void and of no effect.

WHEREFORE, Defendants pray that the Court find that the Agreement is void and of no effect, place the infrastructure and water rights described in the Second Amended Complaint ¶ 12 in a constructive trust with the Association as trustee, deny any relief to Plaintiffs and dismiss Plaintiffs' claims with prejudice.

37. Defendants reallege the foregoing answers and responses herein.

38. Defendants state that ¶ 38 does not assert a claim against the State Defendants and therefore requires no response on their part. Notwithstanding that objection, Defendants respond to ¶ 38 as follows: Paragraph 38 asserts a legal conclusion

to which Defendants are not required to respond. As to the referenced Contracts, Defendants state further that the Contracts speak for themselves and deny any characterizations inconsistent with their language; Defendants deny that the Contracts referenced in ¶ 38 are effective to hold harmless or to indemnify Plaintiff Major or Major Land and Cattle Company for their wrongdoing. Defendants state affirmatively that the Contracts were void and of no effect.

WHEREFORE, Defendants pray that the Court find that the Contracts are void and of no effect, place the infrastructure and water rights described in the Second Amended Complaint ¶ 12 in a constructive trust with the Association as trustee, deny any relief to Plaintiffs and dismiss Plaintiffs' claims with prejudice.

39. Any allegations not responded to specifically in the foregoing paragraphs are denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense: The Court lacks subject matter jurisdiction over Plaintiffs' Declaratory Judgment Act action against the State Defendants because the action is barred by the doctrine of sovereign immunity.

Second Affirmative Defense: The Second Amended Complaint for Declaratory Judgment fails to state a claim upon which relief may be granted.

Third Affirmative Defense: At all times Defendants Attorney General and Secretary, their employees, attorneys and agents, have been engaged in the lawful exercise of their statutory and regulatory duties.

Fourth Affirmative Defense: The Second Amended Complaint does not seek a construction of the constitution of the State of New Mexico, the constitution of the

United States, or any of the laws of the State of New Mexico or the United States, or any statute thereof, and, therefore, is not properly before this Court as a declaratory judgment action.

Fifth Affirmative Defense: Plaintiffs have no constitutional or statutory right to act in violation of state laws or regulations, including no right to make material misrepresentations of fact in the sale of unimproved real estate, no right to violate the state's drinking water laws, and no right to illegally divert water.

Sixth Affirmative Defense: Any waiver between Major and any other party does not bind Defendants or bar them from enforcing the laws and regulations of the state if Plaintiffs have violated them.

Seventh Affirmative Defense: Any contractual language Major has used between himself and private parties to attempt to insulate himself from his illegal activities is void as a matter of public policy.

Eighth Affirmative Defense: Plaintiffs' claims are barred by the doctrines of estoppel and unclean hands.

Ninth Affirmative Defense: Major and Major Land and Cattle Co. were persons not engaged solely in interstate commerce, who owned, operated, leased or controlled plant, property and facilities for the supplying, storage, distribution, or supplying to or for the public of water for domestic use. As such, Major and Major Land and Cattle Co. met the definition of a public utility in NMSA 1978, § 62-3-3.G(3) and their attempt to convey their plant, property and facilities to the Association was an attempt to convey a public utility without the prior express approval of the public regulation commission and was void and of no effect pursuant to NMSA 1978, § 62-6-12.A and B.

**COUNTERCLAIMS FOR ABATEMENT OF A PUBLIC NUISANCE,
FOR ENFORCEMENT OF DRINKING WATER REGULATIONS,
FOR VIOLATIONS OF THE UNFAIR PRACTICES ACT,
FOR FRAUD OR NEGLIGENT MISREPRESENTATION,
FOR CIVIL CONSPIRACY, FOR DECLARATORY JUDGMENT,
FOR RESTITUTION, AND FOR INJUNCTIVE RELIEF**

Nature of the Case

Counterclaimants Attorney General Gary K. King and Secretary Ron Curry file the following Counterclaims seeking remedies and declaratory judgment against Counterdefendant Major who created an illegal and substandard public water supply system, dependant on illegally diverted water that is unfit for domestic purposes, and against all existing Plaintiffs as Counterdefendants and new Counterdefendant AnaBel Treviño, who all failed to disclose material facts about the water system, water rights and water quality to people who bought lots from or through them.

Parties

40. Counterclaimant Ron Curry (“Secretary Curry”) is the duly appointed Secretary of the New Mexico Environment Department (“Department” or “NMED”), established by the Department of the Environment Act. NMSA 1978, § 9-7A-4.

41. Counterclaimant Gary K. King (“Attorney General King”) is the duly elected Attorney General for the State of New Mexico.

42. The New Mexico Environment Department is the state agency responsible for environmental management and consumer protection programs, including, but not limited to, maintaining, developing, and enforcing rules and standards for water supplies. Environmental Improvement Act (“EIA”), NMSA 1978, § 74-1-7.A(2) (1997).

43. Highland Meadows Estates Mutual Domestic Water Consumers and Sewage Works Association (“Mutual Domestic”) is organized under the Sanitary Projects

Act, NMSA 1978, § 3-29-1 *et seq.*, and manages the water system at issue in this litigation.

44. Counterdefendant Malcolm S. Major, Jr. is a real estate developer who resides in Valencia County, New Mexico.

45. On information and belief, Counterdefendant Malcolm S. Major, Jr. also uses the names M.S. Major, Buddy Major and Malcolm S. “Buddy” Major or iterations of those names. Further, on information and belief, he does or has done business as Major Land Company, Major Land and Cattle Co., and Buddy Major Land and Cattle Co., or iterations of those names. All of the foregoing will be referred to collectively herein as “Counterdefendant Major.”

46. Counterdefendant Three Bar Land Co., LLC is a limited liability company organized under the laws of New Mexico, doing business in Valencia County, New Mexico. Its registered agent is M.S. Major.

47. On information and belief, Counterdefendant AnaBel Treviño, a/k/a AnaBel Peters, is an individual and a real estate licensee who resides in the vicinity of Highland Meadows in Valencia County.

Jurisdiction
Abatement of a Public Nuisance

48. A civil action to abate a public nuisance may be brought by verified complaint by a public officer in the name of the state in the district court of the county where the nuisance is located. NMSA 1978, § 30-8-8.

Injunctive Relief and Enforcement of Drinking Water Regulations

49. The EIA authorizes Secretary Curry to bring an action in district court for violation of any rule or regulation adopted and promulgated under the EIA and to seek appropriate relief, including injunctive relief. NMSA 1978, § 74-1-10.B(2) (1999).

***Violations of the Unfair Practices Act,
for Declaratory Judgment and Injunctive Relief***

50. An action under the Unfair Practices Act may be brought by the Attorney General of the State of New Mexico in the county in which the defendant resides, or has his or her principal place of business, or in which the defendant has used or is about to use the practice that violates the Act. NMSA 1978, § 57-12-8(A).

51. The Attorney General brings this action on behalf of the State of New Mexico for the benefit of the State and of the residents of Highlands Meadows Estates who have been injured by the acts and omissions of the Counterdefendants. The Attorney General's authority for this action is pursuant to NMSA 1978, § 8-5-2(B and J) (1933) and NMSA 1978, § 57-12-8(B) (1967) of the New Mexico Unfair Practices Act ("UPA"). Further, Counterclaimant Attorney General has determined that the interest of the State of New Mexico and the public interest require this action.

52. The unfair or deceptive practices at issue relate to and concern Counterdefendants' knowing failure to disclose multiple material problems with water quality and the water delivery system with respect to their sales of parcels of unimproved real property located in Highland Meadows.

Venue

53. Highland Meadows Estates and its water system at issue in this action (“Highland Meadows Water System”) are located approximately 40 miles west of Albuquerque, just south of I-40, in Valencia County.

54. Venue is proper in the Thirteenth Judicial District because the cause of action arose in Valencia County, the real property at issue is located in Valencia County, the public nuisance is in Valencia County, Counterdefendant Major and Counterdefendant Treviño reside in Valencia County, Counterdefendant Three Bar Land Co., LLC does business in Valencia County, and the business practices at issue occurred in Valencia County.

Facts Common to All Counts ***Counterdefendant Major’s Purported*** ***Acquisition and Declaration of Water Rights***

55. On Feb. 2, 1972, a well, referred to as RG-28740, was drilled in the Highland Meadows area in the SE ¼, SE ¼, SE ¼ of Section 6, Township 8N, Range 3W.

56. Highland Meadows Water Consumers Association, Inc. (“HMWCA”) was a non-profit New Mexico corporation whose certificate of incorporation was issued by the State Corporation Commission on April 13, 1971.

57. On May 25, 1977, HMWCA filed a declaration for twenty-five (25) acre feet of water rights for RG-28740 at the Office of the State Engineer (“OSE”).

58. Upon information and belief, the lot on which RG-28740 was drilled is Lot 11, Block 18, Unit 6 of the Highland Meadows Subdivision (“AG Well Lot”).

59. Though HMWCA held title to the AG Well Lot containing well RG-28740 from 1977 to 1997, according to a statement signed by Plaintiff Major, HMWCA did nothing during that twenty year period to develop a water system in Highland Meadows.

60. By 1997, HMWCA was defunct and had paid no property taxes on the AG Well Lot from at least 1986 forward.

61. From at least 1986 through 1997, Counterdefendant Major, or persons associated with him, paid the property taxes on the AG Well Lot, although the AG Well Lot remained in the name of HMWCA.

62. In 1997, Counterdefendant Major caused an appraisal to be prepared for the AG Well Lot, which stated that the lot was worth \$3,500 as of February 26, 1997, but the appraisal did not mention the value of any water rights that might be appurtenant to the AG Well Lot.

63. Counterdefendant Major, without the authority of HMWCA, purportedly called a special meeting of the HMWCA shareholders on May 16, 1997 pursuant to a waiver of notice signed by the alleged directors, who were Counterdefendant Major, his grandson, Brandon Major, and Ben Smith.

64. The alleged directors purportedly elected Counterdefendant Major as President of HMWCA and Brandon Major as Secretary-Treasurer.

65. Upon information and belief, one or more of these “directors” was not a member of the HMWCA as prescribed and mandated by the Association’s bylaws, or was not a duly elected member of the Board, or both. Upon information and belief, Brandon Major was not born until July 31, 1978; if, as Plaintiff Major has stated, HMWCA did

nothing from 1977 to 1997 to develop a water system in Highland Meadows, *see* ¶ 55 above, then HMWCA had been inactive since before Brandon Major was born and he could not possibly have become a lawful director of HMWCA.

66. This putative Board then considered and accepted an offer by Counterdefendant Major to purchase the AG Well Lot, Lot 11, Block 18, Unit 6 of the Highland Meadows Subdivision from HMWCA for the appraised value of \$3,500, paying no value for any water rights.

67. On information and belief, Counterdefendant Major knew or believed that the AG Well Lot included appurtenant water rights, knew or believed that those water rights had monetary value, and knew or believed that the AG Well Lot was worth considerably more than \$3500 if the value of twenty-five acre feet of water rights was included.

68. On information and belief, Counterdefendant Major manipulated the scope of the appraisal in order to exclude the value of the water rights and to minimize the cost of the lot to himself. The foregoing was an act of self-dealing and constituted a breach of fiduciary duty owed to HMWCA by Counterdefendant Major as an officer.

69. Counterdefendant Major entered into a purchase agreement with HMWCA to convey the AG Well Lot to himself for \$3,500. The Warranty Deed by which HMWCA purportedly conveyed the AG Well Lot to Malcolm S. Major, Jr. was signed by Malcolm S. Major, Jr., President of HMWCA on May 16, 1997 and filed at Valencia County on Feb. 27, 1998. Three months later, on June 25, 1998, Counterdefendant Major sought to amend the declaration of water rights for RG-28740 to increase them from twenty-five to 250 acre feet.

70. The bylaws of HMWCA provided that no assets of the corporation would be distributed to its members upon dissolution, and that all assets would be distributed by the Board of Directors to a nonprofit fund, foundation or corporation which is organized and operated exclusively for charitable, educational, religious, and/or scientific purposes.

71. Instead of donating the \$3,500 he had paid HMWCA to charity, Counterdefendant Major used the \$3,500 to cover some of his own expenses in constructing his Highland Meadows Water System, thereby committing conversion, a second act of self-dealing and a second breach of fiduciary duty.

72. On July 21, 1999, the New Mexico Public Regulation Commission cancelled the corporate charter of the HMWCA because the HMWCA had failed to respond to the Commission's notice of failure to file Corporate Reports which had been mailed to HMWCA on May 25, 1998.

Counterdefendant Major's Acquisitions of Additional Wells

73. The foregoing allegations are realleged herein by reference.

74. Between the dates of February 20, 1996 and March 10, 1998, Counterdefendant Major applied for and received exploratory permits from the Office of the State Engineer to drill wells RG-64055 (aka "Mills Well"), RG-67781 (aka "Dump Well"), RG-67783 (aka "Brandon Well"), RG-69297 (aka "Luke Well"), and RG-62813 (aka "Jersey Well"). These permits were subject to a condition prohibiting diversion of water until a permit was issued. No such permit was ever issued.

75. Counterdefendant Major used exploratory wells that were not permitted to divert water to create the Highland Meadows Water System and provide water to residents of Highland Meadows.

76. By April 2000, Counterdefendant Major had begun a process to transfer the Highland Meadows Water System to the persons served by it, and threatened those persons with termination of water service if they failed to cooperate with the transfer.

77. In December 2000, Counterdefendant Major informed residents of Highland Meadows that getting his additional exploratory wells made supplemental points of diversion would be the first step in transferring his water system and that he would pay all legal expenses necessary to complete such an application to the State Engineer.

78. Counterdefendant Major never filed an application to make the above five exploratory wells supplemental points of diversion for RG-28740 and Counterdefendant Major conveyed the Highland Meadows Water System with wells that were diverting water illegally.

***The Creation of the Mutual Domestic and
Its Management of the Highland Meadows Water System***

79. The foregoing allegations are realleged herein by reference.

80. On April 20, 2000, Counterdefendant Major, his daughter Gail Major, Counterdefendant AnaBel Peters and two other persons formed the Highland Meadows Estates Water Cooperative ("Cooperative").

81. Despite having created the Cooperative on April 20, 2000, on at least four occasions after April 20, 2000 and before May 31, 2001, Counterdefendants Major or Three Bar Land Company conveyed Highland Meadows lots to purchasers with language in the respective real estate contracts that provided, "Purchasers agree to become members of a water co-op that will provide water service to the subject property at the time the water co-op is created." Creation of the co-op will relieve the Seller of any

further obligation to provide water service,” or language substantially similar. *See, e.g.*, Real Estate Contract from Three Bar Land Co. to Albert Daniel Gutierrez and Rachel Gutierrez, Nov. 1, 2000, Valencia County, Bk 329, Pg 9706 [emphasis added]. *Exhibit A* at 1.

82. On or about May 31, 2001, Counterdefendant M.S. Major, Jr., d/b/a Major Land & Cattle Co., and Counterdefendant M.S. Major, Jr. individually entered into an Agreement for the Transfer of Water Rights and Infrastructure (“Transfer Agreement”) to the Cooperative, *Exhibit B*, for which Counterdefendant Major received consideration, *id.* at 1.

83. The Transfer Agreement provided that Counterdefendant Major’s conveyance of water rights and infrastructure to the Cooperative was for the purpose of enabling the Cooperative to begin to provide water service to Highland Meadows residents to which Counterdefendant Major had previously provided service. *Exhibit B* at 1.

84. The Transfer Agreement purported to indemnify Counterdefendant Major and Major Land & Cattle Co. from “...any and all claims arising from the transfer of the water rights and infrastructure, the grant of access easements pursuant to this Agreement, and the provision of water service...” whether those claims arose prior to the Transfer Agreement or afterwards. *Exhibit B* at 4.

85. The Transfer Agreement was signed on behalf of the Cooperative by Counterdefendant Major as President, by his daughter, Gail M. Major, by Counterdefendant Anabel Treviño, and one other person. *Exhibit B* at 4.

86. At the time Counterdefendant Major signed the Transfer Agreement on behalf of the Cooperative, Counterdefendant Major knew that the Cooperative was going to convert to a mutual domestic, a local public body. Second Amended Complaint ¶ 16. A local public body cannot constitutionally indemnify. *See* N.M. Const. Art. IX, § 12. Thus, Counterdefendant Major's agreement as President of the Cooperative to indemnify himself personally, despite his knowledge of the Cooperative planned conversion to a mutual domestic, violated the New Mexico Constitution, was a third act of self-dealing, and a third breach of his fiduciary duty and Major's indemnification provision is void as a matter of law.

87. On July 13, 2001, residents of the Highland Meadows Estates area formed a mutual domestic association called the Highland Meadows Estates Mutual Domestic Water Consumers and Sewage Works Association (hereafter the "Mutual Domestic") pursuant to the Sanitary Projects Act, NMSA § 3-29-1 *et seq.* The Mutual Domestic is legally unrelated to the similarly named non-profit corporation Highland Meadows Water Consumers Association, Inc. discussed earlier. The Mutual Domestic is managing the Highland Meadows Water System as of the date of this action.

88. In its initial filing with the Public Regulation Commission, the Mutual Domestic listed sixteen members; however, on information and belief, Counterdefendant Major's existing Highland Meadows Water System was serving more than thirty households at the time he conveyed it to the Mutual Domestic.

89. On August 27, 2001, Counterdefendants M.S. Major, Jr. and M.S. Major, Jr., dba Major Land and Cattle Company, executed a Quitclaim Deed and Bill of Sale that purported to convey to the Mutual Domestic water rights allegedly appurtenant to RG-

28740, RG-67781, RG-62813, RG-64055, RG-69297, and RG-67783, associated water infrastructure and pipelines used for purposes of supplying water to the members of the Mutual Domestic.

90. Counterdefendants M.S. Major, Jr. and M.S. Major, Jr., dba Major Land and Cattle Company knew or should have known that no water rights were appurtenant to RG-67781, RG-62813, RG-64055, RG-69297, and RG-67783 and that these wells were diverting water illegally.

91. The Department's Drinking Water Bureau, which regulates public water supply systems, did not learn about the existence of this Highland Meadows Water System until two years later, on August 13, 2003.

92. By constructing a substandard public water supply system without compliance with relevant codes and without the prior approval of the Department, Counterdefendant Major created substantial risk to public health and violated New Mexico law.

93. At the time the Department discovered the Highland Meadows Water System at issue in this case, the Mutual Domestic was committing a series of drinking water regulatory violations and, on information and belief, had been doing so since it had taken over the water system from Counterdefendant Major.

94. The Department issued several administrative enforcement orders (April 4, 2005; August 3, August 31, and September 11, 2006) to the Mutual Domestic, which culminated in a Settlement Agreement between the Board of the Mutual Domestic and the Department on October 20, 2006).

95. One component of that administrative enforcement effort, in effect since September 11, 2006, was to bar new connections to the Highland Meadows Water System until the Mutual Domestic met certain requirements (“Order Suspending New Connections”).

96. All Counterdefendants learned about the Order Suspending New Connections at a public meeting held by the Department at Highland Meadows on September 10, 2006 or at a subsequent meeting held on November 12, 2006 or both.

The Water Quality at Highland Meadows

97. The foregoing allegations are realleged herein by reference.

98. Samples taken by the Department on January 19, 2007, from the three wells that were operating on the Highland Meadows Water System, showed hardness levels from 887 mg/L to 1300 mg/L calcium carbonate, sulfate concentrations ranging from 1480 to 1790 mg/L, sodium concentrations ranging from 753 to 1180 mg/L and concentrations of total dissolved solids ranging from 3590 to 4200 mg/L.

99. At these concentrations sulfate and sodium produce serious human health effects including diarrhea, dehydration and high blood pressure, and cause an objectionable taste in water.

100. The New Mexico Department of Health evaluated the water quality at Highland Meadows and advised residents that the water should not be used for drinking water in vulnerable populations including infants, children, elderly, and people with hypertension and kidney disease.

Counterdefendants Major and Three Bar Land Co., LLC's Misleading Statements

101. The foregoing allegations are realleged herein by reference.

102. Upon information and belief, Counterdefendant Major, or Counterdefendant Three Bar Land Co., or both, prepared and provided to some buyers of unimproved lots within Highland Meadows a "Property Report" dated December 5, 2000 that describes the water at Highland Meadows as follows: "On previously drilled wells the water is hard and is usually not used for drinking." *Exhibit C* at p.3 (unnumbered p. 14 in original).

103. This statement in the Property Report is misleading and deceptive in a material way because it fails to accurately disclose the problems with water quality, with the illegal diversion of water, and with the water delivery system as set forth in these Counterclaims. Further, Counterdefendants Major and Three Bar Land Co. knew or should have known of the problems and knew or should have known that the statement did not disclose the problems to persons reading the statement in such a way as to reasonably inform them of those problems.

***Counterdefendant Major's
Creation of a Substandard Public Water System
Which Violated the New Mexico Drinking Water Regulations***

104. The foregoing allegations are realleged herein by reference.

105. The Environmental Improvement Act authorizes the Environmental Improvement Board (the "EIB") to adopt regulations that are necessary to protect human health and the environment, including those for water supplies. NMSA 1978, § 74-1-8.A(2).

106. The EIB has promulgated New Mexico Drinking Water Regulations (Regulations), presently codified as 20.7.10 NMAC.

107. The Regulations applicable to Counterdefendant Major's creation of the Highland Meadows Water System became effective January 1, 1995, and were amended December 15, 1999. 20 NMAC 7.1 (1995, and as amended 1999).

108. From January 1, 1995 through December 4, 2002, the New Mexico Drinking Water Regulations defined a "public water supply system" in part as, "a system for the provision to the public of piped water for human consumption if such system has at least fifteen service connections or regularly services at least twenty-five individuals at least sixty days out of the year." 20 NMAC 7.1.103.BA.

109. In contrast, the Regulations defined a "private water supply system" as one which provides piped water for human consumption to fewer than fifteen service connections or to fewer than twenty-five individuals at least 60 days out of the year. 20 NMAC 7.1.103.AZ.

110. Water for "human consumption" includes water used for drinking, bathing, showering, cooking, dishwashing and maintaining oral hygiene.

111. The Regulations imposed particular requirements on persons constructing public water supply systems. These Construction Requirements included, *inter alia* (1) seeking the Department's prior approval before constructing a new public water supply system or modifying an existing one, *id.* at 502.A, (2) submitting plans and specifications for Department approval, *id.* at 502.D, and (3) notifying the Department at the inception of construction, *id.* at 502.K. The Regulations authorized the Department to deny

approval of a public water supply system which would have insufficient protection from contamination. *Id.* at 502.F.

112. Because the Regulations required notification to the Department before construction began, 20 NMAC 7.1.502.K, a developer was required to determine, each time before beginning construction, whether he planned to construct a public or a private water supply system.

113. Upon information and belief, Counterdefendant Major planned to construct a public water supply system with fifteen or more service connections that would serve piped water for human consumption to twenty-five or more persons at least sixty days of the year, as demonstrated by his following acts:

a. In 1997, Counterdefendant Major purchased a large amount of pipe to construct the Highland Meadows water system when almost no persons had yet purchased property there and therefore, the locations of the residences were as yet unknown. This practice is typical of a developer planning a public water supply system but would be atypical of a developer planning a private water supply system or shared wells;

b. On June 25, 1998, Counterdefendant Major sought to amend the declaration of water rights filed for well RG-28740 to increase the declared water rights from 25 to 250 acre feet, signing a sworn declaration that the water would be used for “multi-domestic, sanitary, recreation and all related purposes involved in multi-tract housing and community development.” Two-hundred and fifty acre feet of water rights for “multi-tract housing” would provide water to many more than fifteen service connections or twenty-five people; in contrast, twenty-five

acre feet would have been more than sufficient for a private water system. No water rights at all would have been needed for a typical shared well system, let alone two-hundred and fifty acre feet.

c. In 1998, Counterdefendant Major acquired a 30,000 gallon storage tank, an improvement which provided sufficient storage capacity to supply drinking water to sixty households and which would not generally be needed for a private water system or shared wells.

d. By November 1999, Counterdefendant Major had begun to provide water to Highland Meadows residents by connecting homes via pipelines to his 30,000 gallon storage tank, which was connected to at least three different wells—a pattern consistent with a public water supply system but inconsistent with a private water supply system or shared wells.

e. By February 14, 2000, Counterdefendant Major had agreed to provide water service from well RG-28740 with its 250 acre feet of declared water rights to nine lots or more and had connected that well to more than four miles of pipelines linking homes in three different sections of Highland Meadows Estates subdivision—a layout consistent with a public water supply system but inconsistent with a private water system or shared wells. (One section is 640 acres.)

f. Counterdefendant Major's four or more miles of pipelines were installed along the main streets or along miles of utility easements in the Highland Meadows Estates Subdivision, traversing in the front or the back of hundreds of

lots—a pattern typical of public water supply systems but inconsistent with construction of a private water supply system or shared wells.

g. Of those hundreds of lots, many were owned by Counterdefendant Major and he was actively advertising those lots for sale “with water” or words to that effect.

h. By May 31, 2001, Counterdefendant Major had expended approximately \$170,000 in constructing a water system in Highland Meadows Estates which consisted of several wells connected to pipelines which in turn were connected to Counterdefendant Major’s 30,000 gallon storage tank; that water system was providing water for human consumption to fifteen or more service connections or twenty-five or more persons at least sixty days of the year and thus constituted a public water supply system before Counterdefendant Major conveyed it to the Mutual Domestic.

114. During the period from 1997 to May 31, 2001, Counterdefendant Major was the owner of the Highland Meadows Water System and was responsible for its compliance with the drinking water laws and regulations.

COUNT I

Counterdefendant Major’s Failure to Seek Department Approval before Constructing a Public Water Supply System

115. The foregoing allegations are realleged herein by reference.

116. From January 1, 1995 through December 4, 2002, those who wished to construct a new public water supply system were required to seek the Department’s prior approval in writing by filing an application with the Department’s Drinking Water Bureau. 20 NMAC 7.1.502.A.

117. Counterdefendant Major violated 20 NMAC 7.1.502.A because Counterdefendant Major failed to seek and receive written Department approval before constructing the Highland Meadows Water System which was a new public water supply system.

COUNT II
***Counterdefendant Major's Failure to Submit
Application and Plans Prepared by a Professional Engineer***

118. The foregoing allegations are realleged herein by reference.

119. At all relevant times, any person seeking approval from the Department for a new public water supply system was required to submit a written application containing plans and specifications for the project and prepared under the direct supervision of and sealed by a professional engineer registered in the State of New Mexico. 20 NMAC 7.1.502.D (1995, as amended 1999).

120. The distribution system in the Highland Meadows Water System contains 1.25 inch to 1.5 inch polyethylene pipe serving isolated households spread over several square miles.

121. This size pipe is grossly undersized for the distances and number of households served, violating 20 NMAC 7.1.502.D; *see* Environmental Improvement Division, Guidelines for Water Supply Systems and Treatment Works in New Mexico 39 (Jul. 1, 1987) [hereinafter "EID 1987 Guidelines"] at 37 (requiring a minimum diameter of two inches for water mains and distribution systems capable of delivering certain minimum pressures).

122. Based on such deficiencies, Counterdefendant Major did not have plans and specifications prepared under the direct supervision of and sealed by a professional

engineer registered in New Mexico, and Counterdefendant Major failed to submit any such plans to the Department.

123. Counterdefendant Major violated 20 NMAC 7.1.502.D because Counterdefendant Major failed to submit such a written application containing plans and specifications with the required seal of a professional engineer to the Department prior to constructing the Highland Meadows Water System, which was expected to be a new public water supply system.

COUNT III

Counterdefendant Major's Construction of a Public Water Supply System with Insufficient Protection from Contamination

124. The foregoing allegations are realleged herein by reference.

125. The Department was authorized to deny any application for approval of construction of a public water system if any provisions of Subpart II of the Regulations would not be met. 20 NMAC 7.1.502.F.

126. Subpart II of the Regulations required, among other things, that all public water systems be constructed in such a way as to protect the supply from contamination, 20 NMAC 7.1.208.D, and barred unprotected cross-connections or other piping arrangements whereby unsafe substances could enter a public water supply. 20 NMAC 7.1.208.I.

127. Counterdefendant Major violated 20 NMAC 7.1.208.D and I because Counterdefendant Major constructed a new public water supply system in such a way that it was not adequately protected from contamination, and contained unprotected cross-connections and unsafe piping arrangements.

128. Counterdefendant Major violated 20 NMAC 7.1.502 D and F which authorizes the denial by the Environment Department of an application to construct a public water system if the system was not constructed in accordance with guidelines in Subpart XII or if contaminant standards will not be met. The Department would have denied an application to construct the Highland Meadows Water System in the manner in which Counterdefendant Major constructed it because, upon information and belief, the System contained, at a minimum, the following deficiencies:

a. Some pipes ran above ground, others were only buried a few inches below the surface, and appurtenances were above ground with minimal protection from winter weather. Pipes that freeze due to cold weather expose the public water supply to contamination. *See* EID 1987 Guidelines (requiring water mains to be buried at a sufficient depth to prevent freezing and a minimum of thirty-six inches).

b. The system contained potential sources of contamination including (1) cross-connections between cattle troughs and the Highland Meadows Water System and (2) cross-connections between private wells and the Highland Meadows Water System. *See* 20 NMAC 7.1.208.I.

c. One well (RG-67781) was located too close (135 feet) to an old dump site, and another well (RG-64055) was located too close (150') to a septic tank drain field. *See* 20 NMAC 7.1.109.C and EID 1987 Guidelines at 5 (requiring wells for public water supplies to be at least 200 feet from any potential source of contamination).

d. Well casings terminated less than 18 inches from grade. *See* EID 1987 Guidelines at 7 (requiring well casings to extend a minimum of 18 inches above final ground surface).

e. The storage tank lacked an adequate foundation and was in danger of structural failure from repeated overflows and lack of an adequate overflow pipe. *See* EID 1987 Guidelines at 33, overflows.

f. The storage tank had been previously used for another purpose and had not been reconditioned and coated as required. *See* 20 NMAC 7.1.208.J; and *see* EID 1987 Guidelines at 32 (previously used tanks).

g. Some of the pipe used to construct the system had been previously used or was not certified for drinking water use or both. *See* 20 NMAC 7.1.208.K; and *see* EID 1987 Guidelines at 37 (piping for distribution systems).

COUNT IV

Counterdefendant Major's Construction of a Public Water Supply System Lacking Sanitary Seals

129. The foregoing allegations are realleged herein by reference.

130. At all relevant times the Regulations required that all wells have sanitary seals and that all openings be sealed or screened to prevent entry by vermin. 20 NMAC 7.1.208.E.

131. Counterdefendant Major violated 20 NMAC 7.1.208.E because five of the six wells on Counterdefendant Major's Highland Meadows Water System lacked the necessary components to form a sufficient sanitary seal and none of the wells had concrete pads.

COUNT V
***Counterdefendant Major's Failure to Submit
Record Plans and Specifications and Certificate of Completion***

132. The foregoing allegations are realleged herein by reference.

133. At all relevant times the Regulations required that public water supply systems be constructed in accordance with the approved plans and specifications and that a copy of the record plans and certification of completion be submitted to the Department within 90 days after completion. 20 NMAC 7.1.502.J.

134. Counterdefendant Major violated 20 NMAC 7.1.502.J because Counterdefendant Major failed to construct the Highland Meadows Water System in accordance with plans approved by the Department and Counterdefendant Major failed to submit copies of the record plans and certification of completion to the Department.

COUNT VI
***Counterdefendant Major's Failure to Provide Notification
to the Department of Initiation of Construction***

135. The foregoing allegations are realleged herein by reference.

136. At all relevant times the Regulations required that the applicant notify the Department upon initiation of construction of a new public water supply system and gave the Department the authority to inspect the system during construction and upon completion. 20 NMAC 7.1.502.K.

137. Counterdefendant Major violated 20 NMAC 7.1.502.K because Counterdefendant Major failed to notify the Department when construction of the Highland Meadows Water System was initiated.

COUNT VII
Counterdefendant Major's Creation of a Public Nuisance
(NMSA 1978, § 30-8-1 *et seq.*)

138. The foregoing allegations are realleged herein by reference.

139. A public nuisance consists of knowingly creating, performing or maintaining anything affecting any number of citizens without lawful authority which is injurious to public health, safety, morals or welfare. NMSA 1978, § 30-8-1.

140. A civil action to abate a public nuisance may be brought by verified complaint in the name of the state by any public officer, in the district court of the county where the public nuisance exists, against any person, corporation or association of persons who create, perform or maintain a public nuisance. NMSA 1978, § 30-8-8.B.

141. Counterdefendant Major knowingly created a public nuisance by unlawfully creating the substandard Highland Meadows Water System in violation of the drinking water regulations, and Counterdefendant Major endangered the public health, safety and welfare by exposing citizens to its use.

142. Counterdefendant Major knowingly created the Highland Meadows Water System.

143. Counterdefendant Major knew that the size of the pipeline he was using to construct the Highland Meadows Water System would not provide adequate pressure for the lengths of pipeline he was installing.

144. Counterdefendant Major knew that the water that would be provided by the Highland Meadows Water System required reverse osmosis treatment to make it drinkable and to prevent it from corroding plumbing fixtures.

145. Counterdefendant Major knew that the wells he connected to the Highland Meadows Water System were diverting water illegally.

146. Counterdefendant Major acted unlawfully in creating the Highland Meadows Water System and in failing to disclose material information about it to purchasers, and injured the public health, safety and welfare in the following ways:

a. The Highland Meadows Water System's construction in violation of the Department's drinking water regulations, which were implemented to protect public health, is injurious to the public health, safety and welfare;

b. Counterdefendant Major diverted water from wells for the Highland Meadows Water System in violation of the State Engineer permits for those wells;

c. Counterdefendant Major sold property to purchasers in Highland Meadows through material misrepresentations, without disclosure of the defects in the construction of the system, without disclosure of the illegal water use and without adequate disclosure that the water quality was unfit for domestic purposes, all in violation of the Unfair Trade Practices Act. Violations of statutes intended to protect consumers from unfair trade practices is injurious to the public health, safety and welfare.

147. Counterdefendant Major's actions were willful or reckless.

COUNT VIII
Counterdefendant Major's Creation of a Public Nuisance
(Common Law)

148. The foregoing allegations are realleged herein by reference.

149. An activity conducted or maintained contrary to law may be a public nuisance when the activity unreasonably interferes with a right common to the general public.

150. The public has a right to public water supply systems that are constructed and operated under the supervision of the Department and in compliance with New Mexico law.

151. The public has a right to fair trade practices.

152. The public has a right to public water supply systems that are legally authorized to divert groundwater in compliance with the requirements of the Office of the State Engineer.

153. Counterdefendant Major's creation of a substandard public water supply system, misleading statements, unfair trade practices and illegal diversions of water interfered with these rights and compromised the public health, safety, welfare and convenience.

154. Counterdefendant Major created a common law public nuisance by interfering with rights held by the public that affected the entire community of people served by the water system at Highland Meadows.

155. Counterdefendant Major's actions were willful or reckless.

COUNT IX
Violation of Unfair Practices Act - I

156. All of the foregoing allegations are realleged herein by reference.

157. At all relevant times all Counterdefendants have been engaged in trade or commerce in New Mexico within the meaning of NMSA 1978, § 57-12-2(C) (1967).

Upon information and belief, although Counterdefendant Malcolm S. Major, Jr., has other business interests, including cattle, an important component of his business has been the sale of unimproved real estate within the Highland Meadows Estates subdivision.

158. At all relevant times all Counterdefendants had actual knowledge of many of the problems with the water quality within the Highland Meadows Estates subdivision as described in the preceding paragraphs, of the inadequacy of the water system, of the fact that all but one of the wells at issue in this litigation were permitted for exploration only and not for the pumping and distribution of water to domestic users, and, upon information and belief, of the water system's noncompliance with applicable codes and regulations, and of those matters alleged in the preceding paragraphs of these Counterclaims.

159. For at least ten years, Counterdefendants have been engaged in the sale of unimproved land located within Highland Meadows Estates that Counterdefendant Major owns or has owned. Counterdefendant Major, personally and as the sales agent for his limited liability company, Three Bar Land Co., LLC, has negotiated sales directly. Counterdefendant Major has also negotiated sales on a routine and regular basis through Counterdefendant AnaBel Treviño (f/k/a AnaBel Peters), a real estate licensee (license no. 37374). Before she became a licensed real estate professional on November 30, 2000, Counterdefendant Treviño was an employee or agent or associate of Counterdefendant Major engaged in the sale of Highland Meadows Estates subdivision lots.

160. In the Property Report referenced previously in these Counterclaims, Counterdefendant Three Bar Land Co., LLC, is identified as the owner of the subdivision, consisting (at the time of the date of the Report) of 394 lots and of approximately 673 acres as of December 5, 2000. Counterdefendant M.S. Major, Jr., is identified as “the person responsible for sales of this subdivision.” *Exhibit C* at p. 2.

161. Counterdefendants routinely and regularly have advertised lots in Highland Meadows for sale in the classified ad section of the *Albuquerque Journal* variously as follows: “w/utills.” (e.g., June 1, 1998); “w/utilities” (e.g., August 2, 1998); “w/shared water well & electric” (e.g., October 3, 1998); “w/water/elec.” (e.g., March ___, 2001); “Gorgeous country oasis” (July 14 and 15, 2001). In addition, Counterdefendant Major erected and maintained a billboard on the property that advertised lots for sale “With Water * Electric...Land Home Packages.”

162. Counterdefendants, routinely and as a matter of their regular course of business, made oral representations to prospective buyers that many or most of the lots came “with water,” or that the lots can connect to the community water system, or that there are shared wells.

163. Unless asked a specific or direct question, Counterdefendant Major and his agents or employees or partners or associates, including but not limited to, Counterdefendant Treviño, routinely and as a matter of their regular course of business have not and still do not disclose to prospective buyers the problems with the quality of water or with the water system as set forth in these Counterclaims, including the fact that the Environment Department has issued an Order prohibiting new connections to the water system. As a direct and proximate result of Counterdefendants’ failure to disclose

these problems, some consumers bought lots without knowledge of material information. Some of these consumers would not have bought lots in Highland Meadows Estates if they had been provided accurate and complete information concerning water quality and the water system. In addition, some consumers have incurred costs and expenses in dealing with the water problems, including, but not limited to, buying various water treatment systems (e.g., reverse osmosis systems) and replacing appliances (especially water heaters) and fixtures at an accelerated rate. In addition, some people have suffered health problems that they attribute to the bad water.

164. By letter dated November 16, 2006, Counterclaimant New Mexico Attorney General (then Patricia A. Madrid) informed Counterdefendant Major that she had received a complaint from the New Mexico Environment Department about Counterdefendant Major's advertising lots for sale "with water," without meaningful disclosure of the problems at issue in this litigation. *Exhibit D attached hereto and incorporated herein by reference.*

165. Following his receipt of the letter, Counterdefendant Major painted over "water" on his billboard, but continued not to make oral or written disclosures of problems, and continued to make affirmative oral representations to prospective buyers that many or most of the lots came with water or had ready access to the water system.

166. On January 25, 2007, Counterclaimants met with Counterdefendant Major's attorneys and discussed the problems at issue in this litigation, including, but not limited to, issues regarding false or misleading advertising and the failure to make meaningful disclosures. Counterclaimant Attorney General requested that Counterdefendant Major stop selling lots until the parties drafted a mutually acceptable

disclosure statement to be given to prospective buyers regarding the problems with water quality and the water system. On January 29, 2007, Counterdefendant Major's attorneys told Counterclaimant Attorney General that Counterdefendant Major would not agree to stop selling sell lots until a disclosure was drafted. In a subsequent meeting with Attorney General King, Counterdefendant Major personally made the same statement directly to the Attorney General.

167. In April 2007, Counterdefendant Major personally showed and negotiated the sale of a lot to Ofelio Gallardo-Gonzales and Nadia Gutierrez-Najera, husband and wife (hereafter "the Gallardos"). The buyers speak only a few words of English and Counterdefendant Major appeared to the Gallardos to speak only a few words of Spanish. Some of the communications for the transaction were done by the buyers' ten year old son.

a. Counterdefendant Major affirmatively represented to the Gallardos that the lot came with water, electricity and telephone. Counterdefendant Major told Mr. Gallardo that all he had to do to connect to the water system was to call the Mutual Domestic, and he gave him a name and telephone number to call for that purpose.

b. All of the transaction documents were in English, which neither of the Gallardos read. Counterdefendant Treviño, who, upon information and belief, is conversant or fluent in Spanish, prepared the real estate contract and other documents, all of which were in English. She translated the financial terms of the purchase, but did not translate all of the substantive and material contract provisions, including but not limited to, a handwritten statement on page 2 of the

purchase agreement that “Seller is not guaranteeing or implying that he can provide water service.” *Exhibit E*. Based on Counterdefendants’ affirmative representations and failure to disclose problems with the water system or water quality (including the Environment Department’s administrative order prohibiting new connections), the Gallardos thought that they would be able to connect to the water system and have good, reliable water fit for domestic purposes.

c. Counterdefendants wrote on the contract that “Buyer must contact the Highland Meadows Water Co-op for water service.” Both Counterdefendant Major and Counterdefendant Treviño had attended one or more public meetings with representatives of the Department, including, but not limited to, a meeting held September 10, 2006, at which the Department discussed its administrative order prohibiting new connections to the water system. In spite of their actual knowledge of this information, Counterdefendants did not disclose to the Gallardos that they could not connect, and through the above-quoted statement in the Real Estate Contract, affirmatively represented, directly or by implication, that he could so connect. Further, Counterdefendant Major or Treviño gave Mr. Gallardo the name and telephone number of the Mutual Domestic’s treasurer, telling him that she was the person to call to arrange to connect to the water system.

d. Counterdefendant Treviño gave the Gallardos a copy of the December 5, 2000, Property Report, but did not translate it or explain its material and substantive terms to them, even though the following language is on the front page, in large print: “Read This Property Report Before Signing Anything.”

Specifically, Counterdefendant Treviño did not translate the statement on unnumbered page 14 of the Property Report that states: “On previously drilled wells the water is hard and is usually not used for drinking.” *Attached hereto as Exhibit C* at p. 3 (unnumbered page 14 in original).

e. Upon information and belief, Counterdefendant Treviño has at least ten years’ experience selling lots in Highland Meadows, lives in the area, and is, upon information and belief, the exclusive real estate professional working with or for Counterdefendants on subdivision lot sales. Counterdefendant Treviño represents herself as “the Highland Meadows expert.” In the alternative, she is Counterdefendant Major’s primary real estate professional. At all relevant times, Counterdefendant Treviño has had actual knowledge of the problems with water quality and the water system at issue in this lawsuit.

f. Counterdefendant Treviño, as Counterdefendant Major’s agent with actual, apparent or implied authority, failed to make oral or written disclosures to the Gallardos in the language in which the transaction was conducted of any of the problems at issue in this lawsuit.

g. As a direct and proximate result of the affirmative representations of Counterdefendants, and as a direct and proximate result of their nondisclosures, the Gallardos agreed to pay \$22,000 for the lot, with \$5,000 down. The balance was financed by Counterdefendant Three Bar Land Co. at 8% interest per year, for seven years.

h. After failing to reach the Mutual Domestic contact person whose name he had been given by Counterdefendant Major or Treviño, Mr. Gallardo

made his own connection to the water system. Upon receiving a complaint, the Environment Department met with Mr. Gallardo and told him that he would have to disconnect from the Highland Meadows Water System. Further, the Gallardos found that the water was undrinkable, that it left a residue on their skins that caused all of the family to get rashes, and it started to build up minerals on the faucets.

i. Based on the representations and nondisclosures of Counterdefendants, the Gallardos bought a used mobile home for \$4,500, moved it onto the lot for an additional \$500, and incurred additional expenses in making improvements to it and to the lot, including fencing.

j. The Gallardos would not have bought the lot if they had known about the problems with water quality and with the water system.

168. At all relevant times, including but not limited to during the course of the sale to the Gallardos, Counterdefendants knowingly make and have made false or misleading representations (both affirmatively and by omissions) to buyers of unimproved real property located in Highland Meadows Estates in the regular course of their business that tend to, may or do deceive or mislead persons, in violation of NMSA 1978, § 57-12-2(D) and 8(B), including, but not limited to:

a. by representing that the land has characteristics or benefits that it does not have, in violation of § 57-12-2(D)(5);

b. by representing that the lots are of a particular standard, quality or grade when they are of another, in violation of § 57-12-2(D)(7);

c. by using ambiguity or failing to state material facts when failing to disclose deceives or tends to deceive, in violation of § 57-12-2(D)(14).

169. As a direct and proximate result of the foregoing acts and omissions, some of the people, including, but not limited to the Gallardos, who bought lots from or through Counterdefendants would not have done so if the information concerning water quality and the inadequacy of the water system had been disclosed to them. In addition, some of the people have suffered damages as a direct and proximate result of Counterdefendants' acts and omissions.

COUNT X
Violation of Unfair Practices Act – II

170. All of the foregoing allegations are realleged herein by reference.

171. In the Property Report dated December 5, 2000, Counterdefendants Major and Three Bar Land Co. represent to the public that the Report "covers 394 lots..." and that "the owner (the holder of legal and equitable title) and the owner of this subdivision is: Three Bar Land Co. LLC...." The Report further states that the name and address of the person responsible for sales of this subdivision is: "M.S. Major, Jr...." *Exhibit C* at p. 2.

172. At all times since December 5, 2000, and continuing through the present, the subdivision has consisted of more than 100 lots. At all times, and continuing through the present, Counterdefendant Major has continued to be the person responsible for subdivision sales on behalf of the limited liability company that, on information and belief, he owns. Further, upon information and belief, Counterdefendant Major personally owns 100 or more lots in his own name or in the names of one or more of his "a/k/a's," or "d/b/a's" as identified in the caption of this Answer and Counterclaims.

173. As the person responsible for sales of subdivision lots, Counterdefendant Major routinely performs one or more of the following tasks on behalf of himself and on behalf of Three Bar Land Co.: meets with prospective buyers; shows prospective buyers lots within the subdivision that are available for purchase; negotiates the terms and conditions of land purchases on behalf of Counterdefendant Three Bar Land Co., including, but not limited to, the sale of a lot to the Gallardos.

174. At all times since December 5, 2000, Counterdefendant Major has been the agent of Counterdefendant Three Bar Land Co. for, among other things, the showing of properties for sale and the negotiation of the terms and conditions of land purchases of subdivision property. Upon information and belief, Counterdefendant Major receives valuable consideration from Counterdefendant Three Bar Land Co., directly or indirectly, for his services.

175. Counterdefendant Major's acts on behalf of Counterdefendant Three Bar Land Co. constitute a representation that he is authorized in fact and under the law to act as the owner's agent. Further, his acts in negotiating the sale of lots owned by himself, personally, or in the name of one or more of his "d/b/a's," constitute a representation that he is authorized in fact and under the law to sell such lots.

176. Counterdefendant Major is not licensed pursuant to the New Mexico Real Estate Licensing Act, NMSA 1978, § 61-29-1 *et seq.* (1959).

177. In all transactions in which Counterdefendant Major has engaged since at least December 5, 2000, in which he has been the person in charge of sales of subdivision lots on behalf of Counterdefendant Three Bar Land Co., he has met the definition of "real estate broker" within the meaning of § 61-29-2(A)(4). Further, as (upon information and

belief) the owner of 100 or more lots in his own name or in the name of one or more of his “d/b/a’s,” he has met the definition of “real estate broker” within the meaning of § 61-29-2(A)(4).

178. A person who is a real estate broker is required to be licensed in New Mexico, and unlicensed brokering is unlawful and prohibited. § 61-29-1.

179. In each transaction in which Counterdefendant Major acted on behalf of Counterdefendant Three Bar Land Co. related to a prospective or actual land purchase, and each time Counterdefendants provided a copy of the Property Report to a potential or actual buyer of a subdivision lot, they made actual and implied representations that Counterdefendant Major was authorized by law to engage in such activities. These representations constituted representations knowingly made in the regular course of Counterdefendants’ trade or commerce in New Mexico in connection with the sale of unimproved real estate that may have, tended to, or did deceive or mislead the public by misrepresenting the right of Counterdefendant Major to engage in those transactions, in violation of NMSA 1978, § 57-12-2(D)(15).

180. Counterdefendants’ acts and omissions were willful.

COUNT XI
Fraud and Violation of Unfair Practices Act

181. The preceding allegations are realleged herein by reference.

182. The acts and omissions of the Counterdefendants as set forth in Count IX constituted representations of facts that were not true. The falsity of the representations was known to Counterdefendants, or Counterdefendants made the representations recklessly. The representations were made with the intent to deceive and to induce the

consumers to rely on the representations. The consumers, in fact, did rely on false representations of Counterdefendants, and were damaged.

183. In the alternative, the acts and omissions of Counterdefendants as set forth in Count IX constituted false representations of material facts. At all relevant times Counterdefendants failed to exercise reasonable care in communicating the information conveyed, and Counterdefendants reasonably should have foreseen that consumers would have been harmed if the information conveyed was not correct or was misleading. All consumers justifiably relied on the incorrect or misleading information, and, as a direct and proximate result, were damaged.

184. Fraud or negligent misrepresentation in the regular course of the Counterdefendants' trade or commerce constitute unfair or deceptive trade practices within the meaning of § 57-12-2(D), and constitute *per se* violation of the Unfair Practices Act. Further, fraud constitutes a *per se* willful violation of the Act.

COUNT XII ***Civil Conspiracy***

185. All of the foregoing allegations are realleged herein by reference.

186. At all relevant times as set forth in the preceding paragraphs, a civil conspiracy existed between Counterdefendant Malcolm S. Major, Jr., Three Bar Land Co., LLC, and Counterdefendant AnaBel Treviño.

187. The wrongful acts set forth in Counts IX and XI were carried out by Counterdefendants Major, Three Bar Land Co. and Treviño pursuant to the civil conspiracy and were reckless, wanton or willful.

188. As a direct and proximate result of the civil conspiracy, persons buying land from Counterdefendants Major, Three Bar Land Co. and Treviño in Highland

Meadows Estates were injured, including, but not limited to, the Gallardos, and Counterdefendants Major, Three Bar Land Co. and Treviño are jointly and severally liable for the damages resulting from the wrongful acts set forth in Counts IX and XI .

COUNT XIII

Declaratory Judgment Sought by Counterclaimants King and Curry

189. All of the foregoing allegations are realleged herein by reference.

190. Based on the foregoing, there is an actual controversy between the parties within the meaning of the New Mexico Declaratory Judgment Act, NMSA 1978, § 44-6-1 *et seq.* (1975).

191. The Court should determine the rights, status and legal relations of the parties as follows:

- a. Declare that Counterdefendant Major violated the Environment Department's drinking water regulations in the manner in which he constructed the Highland Meadows water system;
- b. Declare that the water system created by Counterdefendant Major was substandard at the time he created it, that it was substandard at the time he conveyed it to the Mutual Domestic, that it continues to be substandard, and that the substandard construction of the System constitutes a nuisance;
- c. Declare that the water system created by Counterdefendant Major is a public health hazard;
- d. Declare that the water quality provided by the System is a hazard to public health unless consumers are given adequate disclosure and

warned not to drink the water without adequate treatment to remove the sodium and sulfate.

- e. Declare that Counterdefendant Major made statements that the property he sold came “with water,” for use in “homes,” and declare, as a public policy matter, that such statements create a reasonable minimum expectation that, (1) the water diversion is lawful, (2) the water infrastructure is built according to applicable codes, and (3) the water is fit for domestic, i.e., home, purposes and that, to the extent Counterdefendant Major’s water system failed to meet those three standards, his statements were materially misleading.
- f. Declare that Counterdefendant Major’s attempts to insulate himself from liability, including but not limited to statements that the water provided was “as is,” (Second Amended Complaint ¶ 14) or that “Major makes no representations” about the water and water rights, (*id.* at ¶ 17(i)) are insufficient as a matter of law when Counterdefendant Major knew that the water was undrinkable without treatment, knew that the water required reverse osmosis treatment to make it suitable for domestic use, and knew that some of the wells were diverting water illegally and lacked water rights.
- g. Declare that Counterdefendant Major’s attempts to insulate himself through contractual arrangements do not bind the State in its enforcement activities against the person or persons responsible for violations of the law.

- h. Declare that Counterdefendant Major's attempts to be indemnified by the Mutual Domestic are void (i) because it is unconstitutional for a local public body to incur this kind of debt, N.M. Const. Art. IX § 12, and (ii) void as against public policy.
- i. Declare that Counterdefendant Major created a water system dependent on unlawful diversion of water in violation of New Mexico law.

COUNT XIV

Declaratory Judgment to Benefit Individual Consumers Sought by Counterclaimant Attorney General Gary K. King

- 192. All of the foregoing allegations are realleged herein by reference.
- 193. Pursuant to NMSA 1978, § 8-5-2(B and J), Counterclaimant Gary K. King

hereby requests that the Court declare as follows:

- a. Declare that Counterdefendant Major violated the Unfair Practices Act by misleading representations that the property would come "with water," but without disclosure that Counterdefendant Major's water system was substandard and illegally created, that the water system relied upon unlawful diversion of water, and that the water system provided water that is unfit for domestic purposes.
- b. Declare that Counterdefendant Major's Real Estate Contract provisions that relieved Counterdefendant Major of the obligation to provide water service after he created his cooperative are void and against public policy because, without written detailed disclosures to the contrary, no reasonable person would have expected that

Counterdefendant Major would create a cooperative with an illegal and substandard water system, dependent on unlawful diversion of water, which produced water unfit for domestic purposes.

- c. Declare that to the extent that Counterdefendant Major entered into any agreements with purchasers containing terms relieving Counterdefendant Major of liability for his wrongdoing in this action, those terms are void as against public policy.

COUNT XV
Injunctive Relief

194. Based on the foregoing allegations, which are incorporated herein by reference, members of the public have suffered, and will continue to suffer, irreparable harm as a direct and proximate result of Counterdefendants' wrongful acts and omissions if an injunction is not issued. Further, there is no adequate remedy at law, any harm resulting from the issuance of an injunction will be outweighed by the benefit to the public, and there is a substantial likelihood that Counterclaimants will prevail on the merits at trial.

Requested Relief

WHEREFORE Counterclaimants respectfully pray that, following proper evidentiary hearings or trial on the merits, the Court enter the following relief:

A. *Injunctive Relief:* This Court should immediately grant preliminary and permanent injunctive relief against Counterdefendants as follows:

1. Requiring Counterdefendants and their agents and employees to provide oral and written disclosures of the problems with the water quality and

with the water system as set forth in these Counterclaims to all prospective buyers and in all advertising, in a form approved by the Court;

2. Prohibiting Counterdefendants from advertising, showing or selling lots within the Highland Meadows Estates subdivision until such time as the Court has approved the disclosures referenced in the preceding paragraph;

3. Until the Mutual Domestic's water system is brought into compliance with all legal requirements, prohibiting Counterdefendants from representing to prospective or actual buyers of land owned by them within the Highland Meadows Estates subdivision that they may connect to the water system;

4. Prohibiting Counterdefendant Major from constructing, paying for the construction, or requesting the construction of any water supply infrastructure which would be reasonably be expected to lead to construction of a public water system without first applying to the Department and obtaining its prior written approval.

5. Prohibiting Counterdefendant Major from diverting water, or requesting anyone else to divert water in violation of New Mexico law.

B. *Plan for Abatement of a Public Nuisance or, in the alternative, Supplemental Relief Pursuant to Declaratory Judgment in Count XIII ("Abatement and Restitution Plan"):*

After appropriate notice and an order to show cause, if necessary, order Counterdefendant Major to pay for the full amount of funding required to abate the public nuisance or, in the alternative, provide supplemental relief pursuant to the Declaratory Judgment Act in the form of restitution for the Mutual Domestic. The Abatement and

Restitution Plan should provide sufficient funding to construct a public water supply system in compliance with all laws and reasonable engineering codes, including, but not limited to funding for all of the following:

1. All public meetings reasonably necessary to educate the affected residents about the Highland Meadows Water System and receive public input on the Abatement and Restitution Plan; any such meetings shall be supervised by the Department and include a facilitator and provide bilingual translation.
2. Installation of Point of Entry Reverse Osmosis units compliant with NSF Standard 58 for any existing household currently receiving water from Highland Meadows Water System for each such household that wishes to have such a unit installed.
3. All engineering services reasonably necessary to develop and execute the Abatement and Restitution Plan.
4. Execution of the Abatement and Restitution Plan.
5. All professional services reasonably necessary to resolve all legal issues relating to the Mutual Domestic's exploratory wells and the legitimacy of the Mutual Domestic's 250 acre feet of declared water rights which Counterdefendant Major allegedly conveyed to the Mutual Domestic in 2001.
6. All other professional services reasonably necessary to support and assist the Mutual Domestic in resolving its water supply issues and bringing the Mutual Domestic's water supply infrastructure into full compliance with all laws. This would include, but not be limited to, legal services, real estate services, or other ancillary services.

7. Adequate water treatment equipment so that the water provided by the Mutual Domestic is fit for domestic use and meets all reasonable drinking water goals for contaminants.

8. Removal of as much of the substandard pipelines from the old public water system as is feasible and practicable so that Counterdefendant Major cannot readily create another water system using these pipelines.

9. Appointment of a Special Master who shall, (1) take evidence about the amount of funding required to abate the nuisance and provide restitution to the Mutual Domestic and recommend a judgment amount to the Court; (2) establish a court supervised fund to receive the judgment; (3) authorize payment to contractors chosen by the Mutual Domestic with Department approval to assure that the Mutual Domestic meets proper procurement and engineering standards.

10. In the alternative, if the Mutual Domestic's engineers recommend, in consultation with the Department, that the most reasonable and practicable solution for the Mutual Domestic's water infrastructure deficiencies is to dissolve the Mutual Domestic and transfer its members to private wells, the Mutual Domestic may use the funds in the Abatement and Restitution Plan to execute such a plan as advised by its engineers, in consultation with the Department, and with the approval of its members in a lawful election to dissolve. Any such dissolution must be done with the approval of the New Mexico Department of Finance and Administration Local Government Division and in compliance with all laws.

C. *Rescission and Restitution for Injured Residents:* Pursuant to § 57-12-8(B), this Court should rescind the purchase agreements and real estate conveyance documents of consumers who bought lots within Highland Meadows Estates from Counterdefendants Major and Three Bar Land Co., LLC, and order all Counterdefendants to pay restitution for residents, including, but not limited to the Gallardos, who did not receive adequate oral or written disclosures concerning the water problems at Highland Meadows, and who may wish to move from Highland Meadows rather than continue to live there; and order additional restitution to all consumers for their actual damages, including, but not limited to, improvements made to their lots and their costs incurred in attempting to remediate or deal with the undisclosed water problems (this remedy flowing to both those who want to rescind and those who do not want to rescind).

D. *Restitution for Injured Purchasers Who Are No Longer Residents:* Require all Counterdefendants to provide restitution to property purchasers who did not receive adequate disclosure of the water problems at Highland Meadows and subsequently lost their homes in foreclosure or had to sell them due to their inability to deal with the water problems.

E. *Civil Penalties for Violations of the Environmental Improvement Act:* Assess a civil penalty against Counterdefendant Major of \$1,000 for each violation of Department regulations occurring prior to April 6, 1999, and \$1,000 per violation per day for each violation of Department regulations occurring on or after April 6, 1999 pursuant to NMSA 1978, § 74-1-10.

F. *Civil Penalties for Willful Violations of the Unfair Trade Practices Act:* Assess a civil penalty of up to \$5,000 for each willful violation of the UPA that this Court

determines, including, but not limited to, all sales of all lots completed at any time that Counterdefendants had actual knowledge of any of the water quality or water system problems at issue in this litigation that they failed to disclose. NMSA § 57-12-11.

G. *Punitive Damages:* Assess punitive damages against Counterdefendant Major for the willful or reckless creation of a public nuisance.

H. *Joint and Several Liability:* Upon a finding that Counterdefendants were engaged in a civil conspiracy, hold them jointly and severally liable for damages and restitution to which each injured consumer is entitled.

I. *Declaratory Judgment:* Pursuant to Counts XIII and XIV, make the findings and declarations requested therein.

J. Award Counterclaimants' their taxable costs as provided by law.

K. Order such other relief as the Court deems just and proper.

Respectfully submitted,

STATE OF NEW MEXICO, *ex rel.*, GARY K.
KING, Attorney General

Telephonically approved
William S. Keller
Brian Harris

Assistant Attorneys General

P.O. Drawer 1508

Santa Fe, New Mexico 87505-1508

505-827-6360 (WSK)

505-827-7479 (BH)

Attorneys for Attorney General King

RON CURRY, Secretary of the New Mexico
Environment Department



Carol M. Parker
Special Assistant Attorney General
Tracy Hughes, Special Assistant Attorney General
NMED Office of General Counsel
P.O. Box 26110
Santa Fe, NM 87502-6110
505-827-6891
Attorneys for Ron Curry

VERIFICATION

STATE OF NEW MEXICO)
) ss
COUNTY OF SANTA FE)

Karen E. Gallegos, being first duly sworn upon oath, deposes and states that she is the Division Director for the Water and Wastewater Infrastructure Development Division for the New Mexico Environment Department and that she has read the foregoing Counterclaims and, based on representations from his staff and counsel, has read and understood the contents therein, and that the matters therein stated are true and correct to the best of his knowledge.


KAREN E. GALLEGOS

SUBSCRIBED AND SWORN TO before me on this the 12th day of August 2008, by Karen E. Gallegos.

Mylicia Y. Yagarevic
Notary Public

Commission Expires: April 3, 2011

CERTIFICATE OF MAILING

I certify that on August 14, 2008, I caused a copy of the foregoing to be delivered to the following attorneys of record: HOLLAND & HART, LLP (Michael Campbell, Robert J. Sutphin and Darcie B. Weingard), 110 N. Guadalupe St., Ste. 1, Santa Fe, N.M. 87501; William Keller and Brian Harris, NM Attorney General's Office, 408 Galisteo, Santa Fe, NM; MONTGOMERY & ANDREWS PA, Sharon Shaheen, 325 Paseo de Peralta, Santa Fe, NM 87504-2307.

Carol M. Parker

Real Estate Contract

244912

THIS CONTRACT IS MADE in triplicate this 1st day of November, 2000 by and between Three Bar Land Company, a New Mexico Limited Liability Company, whose address is PO Box 1299, Los Lunas, New Mexico 87031, hereinafter called the Seller, and Albert Daniel Gutierrez and Rachael Gutierrez, husband and wife, as joint tenants, whose address is 5600 Territorial NW, Albuquerque, New Mexico 87120, hereinafter called the Purchaser. Whenever a masculine pronoun is used, it shall also be considered as referring to the female gender and plural pronouns, whichever is proper.

1. SALE: The Seller, in consideration of the promises and agreements herein made by the Purchaser, agrees to sell and convey to the Purchaser the following described real estate, hereinafter called the Property, in the County of Valencia and State of New Mexico:

Lot numbered One Hundred Forty-nine (149), of HIGHLAND MEADOWS ESTATES, UNIT 5, a Subdivision in Valencia County, New Mexico, as the same is shown and so designated on the Plat thereof filed in the Office of the County Clerk of Valencia County, New Mexico, on April 16, 1970 in Cabinet "B", Page 279;

Subject to reservations, restrictions, restrictive covenants, easements of record, the lien of the Middle Rio Grande Conservancy District, taxes for the year 2000 and years thereafter and all other matters of record.

The Seller agrees, upon completion of all terms and conditions of this contract by the Purchaser, that the Purchaser shall then receive the Warranty Deed and related documents placed in escrow with this Contract.

2. PRICE AND PAYMENT: The Purchaser agrees to buy the above-described Property and to pay Seller therefor the total sum of FOURTEEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$14,500.00), payable as follows: ZERO AND NO/100 DOLLARS (\$0.00), cash down payment, the receipt of which is hereby acknowledged, and the balance of FOURTEEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$14,500.00), payable as follows:

In monthly installments of \$183.95 each, or more, at Purchaser's option, including interest from November 16, 2000 on the unpaid principal balance at the rate of 12.00% per annum, commencing December 16, 2000 and on or before the 16th day of each successive month thereafter until paid in full.

Purchaser shall pay a late payment penalty of \$75.00 on any payment that is over fifteen (15) days past due, payable at the time such late payment is made. Any late payment penalties shall be paid to Seller as additional interest. Unless otherwise instructed by Seller in writing, Escrow Agent may accept a regular payment without the late charge, which shall be due upon demand.

Purchasers agree to become members of a water co-op that will provide water service to the subject property at the time the water co-op is created. Creation of the co-op will relieve the Seller of any further obligation to provide water service. Purchasers acknowledge that there will be a \$1,000.00 membership fee required by the co-op. ~~Payments shall be made to the water co-op on or before the 15th day of each month after formation of the water co-op.~~ A monthly water fee will be due each month after formation of the water co-op.

The payments as above provided shall be paid to the escrow agent and continue until the entire unpaid balance of the purchase price (exclusive of any prior lien or obligation being assumed) plus any accrued interest due to the seller is fully paid. Said unpaid balance shall bear interest at the rate of Twelve percentum (12.00%) per annum from the effective date.

APPLICATION OF PAYMENTS: Check and initial only one of the following two paragraphs.

☐ (a) Payments, excepting prepayments, shall be applied to regularly scheduled installments in the order in which the same were made, to be credited as though the payments were made on their respective due dates.

☒ (b) Payments shall be applied as of the date of receipt by Escrow Agent first to accrued interest then to principal.

The Foregoing Instrument Is a Correct Copy of The Original on File in This Office

12-27-2007

County Clerk and Clerk of The Probate Court in and for the County of Valencia, State of New Mexico

by: *Doraine Romero*

NOV 30 2000 AT 11:12 AM

BOOK 329 PAGE 9706

STATE OF NEW MEXICO
COUNTY OF VALENCIA
FILED FOR RECORD
BK 329 PG 9706
KANDY CONDOVA COUNTY CLERK
REG NO 806-14 AMT \$ 1,200
PU BY *Shirley* DEPUTY

MPAT
Seller *MPAT* / Purchase *MPAT*

EXHIBIT
A

All payments shall be assumed to be regular payments, and not prepayments, unless otherwise specified by Purchaser in writing at the time of delivering such payments to Escrow Agent. Unless otherwise provided, Purchaser may prepay the unpaid balance in whole or in part at any time. Any prepayment shall be credited first to unpaid or deferred late charges, then to accrued interest, then to the principal balance of this Contract exclusive of assumed liens or obligations, then to assumed liens or obligations as described in this paragraph. Notwithstanding any prepayments, Purchaser shall make the next regularly scheduled payments.

If Purchaser fails to make any of the payments or perform any other obligations required hereunder, including the payment of any assumed obligation, and if Escrow Agent or Seller's attorney makes written demand therefor pursuant to Paragraph 5 below, the Purchaser shall pay within the time allowed the additional sum of \$100.00, unless otherwise stated, for the demand letter fee.

The following lien(s) or obligation(s) is currently outstanding on the property:

Type of Lien or Obligation Holder

Loan Number

Recording Data: Book & Page

None

This space is intentionally left blank.

3. PURCHASER TO MAINTAIN PROPERTY, PAY INSURANCE, TAXES AND PAVING LIENS AND SELLER'S RIGHTS:

(a) Maintenance. Purchaser will maintain the Property in as good condition as on the Effective Date, excepting normal wear and tear and casualty losses insured pursuant to this contract.

(b) Insurance. The Purchaser will keep the insurable improvements upon the Property insured against the hazards covered by fire and extended coverage insurance, with an insurance company satisfactory to Seller in the amount of N/A for the benefit of Purchaser and Seller as their interests may appear.

(c) Taxes. Unless otherwise stated herein, the property taxes for the current year have been divided and prorated between Seller and Purchaser as of the date of this contract, and Purchaser is responsible for and shall pay the taxes and assessments of every kind hereafter billed. Purchaser shall have the property assessed for taxation in Purchaser's name. Unless taxes are paid through an escrow account, Purchaser will send copies of paid tax receipts to Seller on or before December 10th for the first half, and on or before May 10th for the second half of each year's property taxes.

(d) Paving, Utility and Other Improvement Liens and Charges. Subject to proration, Purchaser assumes any paving, utility or other improvement liens or charges now assessed against the Property and will pay all installments of principal and interest thereon that become due after the Effective Date.

(e) Seller's Rights. If the Purchaser fails to pay insurance premiums, taxes and assessments, paving liens, improvement liens or standby charges, or other such matters prior to the same becoming delinquent, Seller may pay the same (but is not obligated to do so) for protection of the Property and his interest therein. Payment of such charges shall not be deemed a waiver of any default of Purchaser for failure to pay such charges, and such amounts as have been so paid shall be immediately due and payable to Seller, and shall bear interest until paid at the same rate as provided in Paragraph 2 above.

4. PURCHASER'S RIGHT, SELLER'S RETENTION OF INTEREST:

Purchaser shall be entitled to take possession of the Property and retain possession unless and until Purchaser's interests under this Contract shall be terminated by Seller as provided in Paragraph 5 below. Legal title to the Property shall remain in Seller's name until this Contract has been fully performed upon the part of Purchaser and the Warranty Deed delivered as specified.

5. SELLER'S RIGHTS IF PURCHASER DEFAULTS:

(a) Default Notice. Time is of the essence in this Contract, meaning that the parties shall perform their respective obligations within the times stated. If Purchaser fails to make any of the payments required in Paragraph 2, herein, at the times specified, or fails or refuses to maintain insurance or to pay taxes, assessments or other charges against the Property, or fails or refuses to repay any sums advanced by the Seller under the provisions of Paragraph 3 above, the Seller may make written demand upon the Purchaser and Purchaser's assignees as defined in paragraph 7(a), with such notice to specify the default and the curative action required, at his address as follows: 5600 Territorial NW, Albuquerque, New Mexico 87120 or at such other address that Purchaser may designate by a written statement delivered to the Escrow Agent.

(b) Manner of Giving Default Notice. Notice in writing shall be given by certified mail, return receipt requested, addressed to the Purchaser at the effective address for Purchaser as provided in Paragraph 5(a), with a copy to Escrow Agent. Purchaser expressly acknowledges that notice to him by mail, in the manner above specified, is sufficient for all purposes, regardless of whether he actually receives such notice.

(c) Purchaser's Failure to Cure Default Results in Termination of Contract or Acceleration of Entire Unpaid Balance. If the Purchaser fails or neglects to cure any default within thirty (30) days after the date Seller's default notice is mailed, then the Seller may, at his option either declare the whole amount remaining unpaid to be then due and proceed to enforce payment of the entire remaining unpaid balance, plus any accrued interest, together with reasonable attorney's fees, or he may terminate Purchaser's rights to the Property and retain all sums paid as liquidated damages to that date for the use of the property, and all then the period for curing the default shall extend to the close of business on the next regular business day of the Escrow Agent. Acceptance by Escrow Agent of any payment tendered shall not be deemed a waiver by Seller, or extension of the time for cure, of any other default under this Contract. In the event of termination, Purchaser hereby waives any and all rights and claims for reimbursement for improvements he may have made upon the Property.

BOOK 329

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RELA

PAGE 2 OF 4

Seller _____ / Purchaser CC PL

(f) Affidavit of Unrecovered Default and Election of Termination. A recordable affidavit made by Seller, his agent, or Escrow Agent, identifying the parties, stating the legal description of the Property or the recording data of this Contract and stating the date that notice was duly given as provided above, that the specified default has not been cured within the time allowed and that the Seller has elected to terminate, and delivered to the Escrow Agent shall be conclusive proof for the Escrow Agent and any subsequent Purchaser or encumbrance for value of such unrecovered default and election of termination.

(g) Purchaser Becomes Tenant. Upon termination, Purchaser has no continuing right in possession. If Purchaser remains in possession of the Property after this Contract has been terminated as above provided, Purchaser shall then become a tenant at will, for a rental amount equivalent to the installment payment theretofore required as monthly payments under this Contract, with the first such rental payment due immediately, in advance, and such tenancy being subject to termination by either party upon thirty (30) days separate prior written notice. Seller's acceptance of such rental payment(s) shall not be deemed as any waiver of his rights, nor shall it constitute any manner of estoppel.

(h) Legal Right to Evict Purchaser. Forcible entry and detainer proceedings, in addition to any other appropriate legal remedies, may be utilized by the Seller if necessary to obtain possession of the Property following termination of this Contract and termination of Purchaser's continued tenancy thereafter. If such proceedings are filed, Purchaser shall be liable for Seller's reasonable attorney's fees plus the legal costs of such action.

(i) Rights and Obligations Surviving Termination. Upon termination of Purchaser's rights in the Property, Purchaser will provide an accounting to Seller of any rents and deposits received by Purchaser from the Property, which obligation will survive termination. Notwithstanding the termination of Purchaser's rights in the Property, Purchaser will be liable to Seller for any waste to the Property as well as for any unpaid taxes or utilities liens which survive the termination of Purchaser's rights, prepaid rent, and rental deposits.

6. TITLE SEARCH:

Seller is delivering a Title Search Report to Purchaser at the time this contract is made, showing status of title to the Property as of the date of this contract, subject to the matters referred to in this contract, and Seller is not obligated to provide any other or further evidence of title.

7. PURCHASER'S RIGHT TO SELL:

(a) First Provision: Purchaser shall be entitled to sell, assign, convey or encumber his entire interest in this Contract (but not a portion thereof) and the Property to any person or entity, hereinafter called the Assignee, and may retain a security interest therein, without obtaining the consent or approval of the Seller. The Purchaser shall not, however, be released from his obligations hereunder by any such sale, assignment, conveyance or encumbrance. In the event Purchaser does sell, assign, convey or encumber said interest, then Purchaser, his Assignee, or any subsequent Assignee shall deliver a copy of such written sale, assignment, conveyance or encumbrance document to Escrow Agent.

Such sale, assignment, conveyance or encumbrance document shall specify the address of the Assignee and upon receipt of such document by the Escrow Agent, Seller shall send notice of any default to the Assignee. If such document is not received by the Escrow Agent, Seller shall not be required to send notice of default to the Assignee, unless Seller has actual knowledge of the Assignee's name, address and interest in the property.

(b) Special Alternative Provision:

CAUTION: THE FOLLOWING PROVISION SEVERELY RESTRICTS THE RIGHT OF PURCHASER TO SELL, ASSIGN, CONVEY OR ENCUMBER THIS CONTRACT AND THE PROPERTY. If the parties wish to invoke this Provision, they should check the box as indicated and each initial as provided. If the Special Alternative Provision is elected, the First Provision does not apply.

☒ *[Signature]*

Purchaser shall not be entitled, directly or indirectly, to sell, assign, convey or encumber all or any portion of the Purchaser's interest in this Contract or in the Property without first obtaining the written consent of Seller, which Seller will not unreasonably withhold. In the event that Purchaser shall, directly or indirectly, sell, assign, convey or encumber or contract to sell, assign, convey or encumber, directly or indirectly, all or any portion of the Purchaser's interest in the Contract or in the Property without consent of Seller, it shall be an event of default subject to the rights of Seller in Paragraph 5, herein.

Caution: If the Property is subject to any prior mortgage(s), Deed(s) of Trust or Real Estate Contract(s), then the provisions thereof should be examined carefully for any conflict with the above clause.

8. **BINDING EFFECT:** This Contract shall extend to and be obligatory upon the heirs, executors, administrators, personal representatives, successors, and assigns of the parties to this Contract.

9. APPOINTMENT OF AND INSTRUCTIONS TO ESCROW AGENT:

The Parties hereby appoint as Escrow Agent:

Security Escrow of Valencia County
PO Box 1090
Los Lunas, NM 87031

The following papers are herewith placed in escrow:

1. Signed copy of this Contract.
2. Original Warranty Deed signed by Seller.
3. Original Special Warranty Deed signed by Purchaser.

Add following information, if applicable:

Name and address of mortgagee:

None

Loan No.

Name and address of Escrow Agent under any other contract on the Property:

None

(a) The fee(s) of the Escrow Agent shall be paid as follows: The Seller agrees to pay all fees charged by the Escrow Agent for the servicing of this Real Estate Contract.

If such fee(s) are paid wholly or in part by Purchaser, such amount shall be in addition to the amounts due from Purchaser as provided in Paragraph 2, herein. The Escrow Agent is instructed to accept all monies paid in accordance with this Contract and remit the money received (less applicable escrow fees) as follows: TO Seller as it may direct.

BOOK 329 PAGE 9700

RELA

PAGE 3 OF 4

[Signature]
Seller

[Signature] / *[Signature]*
Purchaser

(b) All payments shall be deemed provisionally accepted when tendered, subject to determination by the Escrow Agent of the correct amount and its timeliness.

(c) Upon full payment of all amounts due and owing to the Seller under this Contract by the Purchaser, the Escrow Agent is directed to release and deliver the escrow documents to the Purchaser.

(d) If the Seller or his agent delivers an Affidavit of Unsecured Default and Election of Termination (as described in Paragraph 5 above) to the Escrow Agent, then the Escrow Agent shall release and deliver the escrow documents to the Seller. The Escrow Agent shall be entitled to rely on such Affidavit as conclusive proof of termination.

(e) The Escrow Agent is instructed that after each and every written demand is mailed to the Purchaser, pursuant to Paragraph 5 above, and a copy thereof is furnished to the Escrow Agent, not to accept less than the full amount of the sum stated as due in the written demand, plus the additional \$100.00, unless otherwise stated, for the demand letter fee.

(f) The Escrow Agent is entitled to charge its standard fees current as of the date the service is rendered, but all changes shall become effective only after sixty (60) days written notice to the party or parties paying the fee of the Escrow Agent.

(g) Seller and Purchaser will each indemnify and save harmless the Escrow Agent against all costs, damages, attorney's fees, expenses and liabilities which it may incur or sustain in connection with this Contract, including any interpleader or declaratory judgment action brought by Escrow Agent, but excepting failure of the Escrow Agent to comply with this Paragraph 9.

(h) The Escrow Agent shall have the right to resign as Escrow Agent under this Contract by giving the Parties sixty (60) days written notice of intent to resign. The Parties shall thereupon mutually select a successor Escrow Agent and give written notice to the Escrow Agent of such selection. If the Parties fail, for any reason, to mutually select a successor Escrow Agent and give Escrow Agent written notice of such selection within sixty (60) days after mailing by the Escrow Agent of notice of intent to resign as aforesaid, then the Escrow Agent may select the successor Escrow Agent. Delivery by the Escrow Agent to the successor Escrow Agent of all documents and funds, after deducting therefrom its charges and expenses, shall relieve the Escrow Agent of all liability and responsibility for acts occurring after the date of the assignment in connection with this Contract.

10. SEVERABILITY CLAUSE: The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of the remainder of this Contract.

The Parties have signed and acknowledged this Contract effective as of the date stated at the beginning of this Contract.

CAUTION: YOU SHOULD READ THIS ENTIRE CONTRACT BEFORE SIGNING. IF YOU DO NOT UNDERSTAND THIS CONTRACT, YOU SHOULD CONSULT YOUR ATTORNEY.

SELLER

Three Bar Land Company, a New Mexico
Limited Liability Company

M. S. Major, Jr.
M. S. Major, Jr., as Member

PURCHASER

Albert Daniel Gutierrez
Albert Daniel Gutierrez
Rachael Gutierrez
Rachael Gutierrez

ACKNOWLEDGMENT FOR NATURAL PERSONS

STATE OF NEW MEXICO

COUNTY OF Valencia

} ss.

This instrument was acknowledged before me this 1st day of November, 2000, by Albert Daniel Gutierrez and Rachael Gutierrez.

My commission expires: 5/31/03
(Seal)

[Signature]
Notary Public

ACKNOWLEDGMENT FOR LIMITED LIABILITY COMPANY

STATE OF NEW MEXICO

COUNTY OF Valencia

} ss.

This instrument was acknowledged before me this 1st day of November, 2000, by M. S. Major, Jr., as Member of Three Bar Land Company, a New Mexico Limited Liability Company, on behalf of said company.

My commission expires: 4-10-2002
(Seal)

[Signature]
Notary Public

BOOK 329

PAGE 9709

AGREEMENT FOR TRANSFER OF WATER RIGHTS AND INFRASTRUCTURE

This Agreement is entered into this 31st day of May, 2001, by and between M.S. Major, Jr. d/b/a Major Land & Cattle Co. and M. S. Major, Jr., individually ("Major") and the Highland Meadows Estates Water Cooperative Association ("Cooperative"), (collectively hereinafter the "Parties").

WHEREAS, Major holds title to certain water rights and associated infrastructure, including wells, pipelines, storage tank, and chlorinator (collectively hereinafter "infrastructure"); and

WHEREAS, such water rights and infrastructure have been utilized to provide water to the residents of Highland Meadows Estates; and

WHEREAS, on April 20, 2000, the Highland Meadows Estates Water Cooperative Association was formed for purposes of providing water to the residents of Highland Meadows Estates who became members of the Cooperative; and

WHEREAS, title to the water rights and infrastructure have remained in Major and the Parties desire to transfer title to certain water rights and infrastructure as specified in this Agreement for purposes of allowing the Cooperative or its successor organization to provide service to its membership and hold title to the water rights and infrastructure.

NOW THEREFORE, the Parties agree as follows:

I. Transfer of title.

A. Water Rights.

Major agrees to transfer title the following water rights to the Cooperative: (1) any and all water rights held by Major under New Mexico State Engineer File No. RG-28740; (2) any and all water rights held by Major under New Mexico State Engineer File No. RG-67781; (3) any and all water rights held by Major under New Mexico State Engineer File No. RG-62813; (4) any and all water rights held by Major under New Mexico State Engineer File No. RG-64055; (5) any and all water rights held by Major under New Mexico State Engineer File No. RG-69297. Transfer of the water rights shall be by quitclaim deed to be delivered to the Cooperative within fifteen (15) days after the execution of this Agreement.

B. Infrastructure.

Major agrees to transfer title to the Cooperative for the following infrastructure: (1) 30,000-gallon storage tank (No. 99) located in Unit 6, Block 17, Lot 15; (2) water chlorinator

located in Unit 6 Block 18 Lot 11; (3) all existing pipelines currently existing in Highland Meadows Estates and used for purposes of supplying water to the members of the Cooperative; (4) the wells, casing and other infrastructure currently existing and necessary for the function of wells RG-28740, RG-67781; RG-62813; RG-64055; and RG-69297. The conveyance of the infrastructure does not include any conveyance of the fee land underlying the infrastructure. Transfer of the infrastructure shall be by Bill of Sale and quitclaim deed, such documents to be delivered to the Cooperative within fifteen (15) days of the execution of this Agreement.

II. No representations or warranties with regard to water rights.

Major makes no representations or warranties regarding the amount of water, the sufficiency of water, the quality of water or the validity of the water rights under applicable law with regard to any water rights subject to this Agreement.

III. Grant of Easement.

Major agrees to grant the Cooperative easements as necessary for the purposes of construction, operation, maintenance and repair of the wells, pipelines and water system in Highland Meadows Estates. The easements shall include the right to maintain the well and water system and to construct, operate, inspect, maintain and repair the wells and water system. The easement includes the right to use such vehicles and rigs as are commonly and reasonably used for the purposes of well drilling, equipping and repair, and of water and power line installation, repair and replacement. Such easements shall be more specifically set forth in a Grant of Easement delivered to the Cooperative within fifteen (15) days of the execution of this Agreement.

IV. Filings with the Office of the New Mexico State Engineer.

The Cooperative shall be responsible for any necessary filings with the Office of the New Mexico State Engineer or other entity required to transfer the water rights to the Cooperative or to bring the water rights into good standing.

V. Successors and Assigns.

This Agreement shall inure to the benefit of the successors and assigns of either Major or the Cooperative. The Parties specifically agree that this Agreement shall be assignable and shall inure to the benefit of the successor entity of the Cooperative, the Highland Meadows Mutual Domestic Water Consumers Association. Such assignment shall be made in writing by the Cooperative.

VI. Consideration.**A. Priority of Service.**

In exchange for the transfer of the water rights set forth in Paragraph I(A) of this Agreement, and the infrastructure set forth in Paragraph I(B), the Cooperative or its successor organization, agrees that all lots in the Highland Meadows Estates currently owned by Major shall be included in the service area of the Cooperative or successor organization and after service of existing members, shall receive first priority of service upon payment of applicable fees.

B. Membership Fees Waived as to Lots Owned by Major.

In exchange for the transfer of the water rights set forth in Paragraph I(A) of this Agreement, and the infrastructure set forth in Paragraph I(B), the Cooperative or its successor organization, agrees that any membership fee applicable to either entity, shall be paid in the maximum amount of \$300.00 as to all lots owned by Major in Highland Meadows Estates or sold to a third party by Major from May 26, 2001 until December 30, 2001. Additionally, any membership fee shall be waived as to Unit 6, Block 19, Lots 7 and 8, owned by Gail Major.

C. Cost of Infrastructure.

In exchange for the transfer of the water rights set forth in Paragraph I(A) of this Agreement, and the infrastructure set forth in Paragraph I(B), the Cooperative or its successor organization agrees that the hook-up fee and any associated infrastructure costs shall be capped at \$500.00 for up to 1,000 feet of necessary infrastructure, for all lots owned by Major in Highland Meadows Estates or sold to a third party by Major from May 26, 2001 until December 30, 2001. If infrastructure extending greater than 1,000 feet is required, Major or the third party purchaser shall pay any additional cost above \$500.00 for the infrastructure.

D. Livestock Tanks.

Any livestock tanks belonging to Major and existing as part of the water system and receiving water from the system at the time of the execution of this Agreement, shall remain part of the system and receive water from the system without cost or fees to Major.

VII. Entire Agreement.

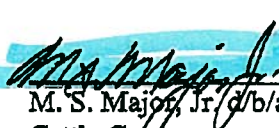
This Agreement constitutes the entire agreement between the Parties regarding the transfer of the water rights and infrastructure and may only be amended in writing, duly executed, by all Parties hereto or their successors in interest. Major makes no representations, warranties or covenants not included in this Agreement, and the Cooperative or its successor organization shall not rely on any representations, warranties or covenants not included in this Agreement.

VIII. Indemnification and Release.

The Cooperative or its successor organization agrees to indemnify and hold harmless and release Major or Major Land & Cattle Co. from any and all claims arising from the transfer of the water rights and infrastructure, the grant of access easements pursuant to this Agreement, and the provision of water service. Such indemnity and release shall include, but not be limited to, claims by the Cooperative or its successor organization or any members or eligible members of the Cooperative or successor organization regarding water service, and any liability arising from the formation of the Highland Meadows Water Cooperative or its successor organization, the Highland Meadows Mutual Domestic Water Consumers Association. Such indemnity and release shall apply to all claims whether arising prior to or after the execution of this Agreement. To the extent, if at all, that § 56-7-1, NMSA 1978 (as amended) is applicable to this Agreement, the agreement herein to indemnify shall not extend to liability, claims, damages, losses or expenses, including attorney fees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, by Major or its agents or employees; or (2) the giving or failure to give directions or instructions by Major, or its agents or employees, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property.

IX. Survival of Agreement.

The portions of this Agreement which are not fully performed by delivery of documents specified shall survive the closing of this transaction and the delivery of conveyancing documents including, but not limited to, the Cooperative's obligations to provide water service and to indemnify and release Major.


M. S. Major, Jr./d/b/a Major Land &
Cattle Co.


M. S. Major, Jr., individually

Highland Meadows Estates Water Cooperative Association


Gail M. Major


M. S. Major, Jr., President


Anabel Trevino


Janis Peterson

K:\dax\client\48600\181W0168451.WPD

RECEIVED

DEC 27 12 01

SALES/

READ THIS PROPERTY REPORT BEFORE SIGNING ANYTHING

This Report is prepared and issued by the Developer of this subdivision. It is not prepared or issued by the Federal Government.

Federal law requires that you receive this Report prior to your signing a contract or agreement to buy or lease a lot in this subdivision. However, NO FEDERAL AGENCY HAS JUDGED THE MERITS OR VALUE, IF ANY, OF THIS PROPERTY.

If you received this Report prior to signing a contract or agreement, you may cancel your contract or agreement by giving notice to the seller any time before midnight of the seventh day following the signing of the contract or agreement.

If you did not inspect the lot prior to signing a contract or agreement, you have six (6) months to inspect the lot. You may cancel your contract by giving notice to seller any time within three (3) days after the date of personal inspection.

If you did not receive this Report prior to signing a contract or agreement, you may cancel the contract or agreement any time within two years from the date of signing.

NAME OF SUBDIVISION Highland Meadows Estates, Unit One,
 Unit Two, Unit Three-A, Unit Four,
 Unit Five, Unit Six, Unit Seven,
 Unit Eight, Unit Nine

NAME OF OWNER Three Bar Land Co., LLC

DATE OF REPORT 12/5/2000

ILS # 30510

GENERAL INFORMATION

This Property Report covers 394 lots located in Valencia County, New Mexico. See pages 22 to 27 for a listing of these lots. Highland Meadows Estates encompasses 394 lots approximately 673 acres. When we refer to "Highland Meadows" or the "subdivision" we are referring to the entire 394 lot subdivision.

The lots in this subdivision were originally part of a large development; developed by Talavera Corporation in the early 1970's. The original development contained 2,490 lots.

The name and address of the owner (the holder of legal and equitable title) and the owner of this subdivision is:

Three Bar Land Co., LLC
 P.O. Box 1299
 Los Lunas, New Mexico 87031
 (505) 836-6452

The name and address of the person responsible for sales of this subdivision is:

M.S. Major, Jr.
 Three Bar Land Co., LLC
 P.O. Box 1299
 Los Lunas, New Mexico 87031
 (505) 836-6452

Answers to questions and information about this subdivision may be obtained by telephoning the Owner at the number listed above.

ILS #30510

UTILITIES

Here we will discuss the availability and cost of basic utilities. The costs which we discuss below are estimates and are subject to change from time to time.

WATER

Water is to be supplied to the individual lot line by individual wells, or from the Association discussed below. It is your responsibility to have the line extended to your house or to have the well drilled.

The range of the total estimated costs of drilling a private well is between \$2,000 and \$6,000.

There is no assurance a productive well can be installed. On previously drilled wells the water is hard and is usually not used for drinking.

The purity and chemical content of the water cannot be determined until each individual well or source of water is completed and tested.

The owners of the lots have formed the Highland Meadows Estates Mutual Domestic Water Consumers & Sewage Works Association, a member-owned, member-operated mutual association formed under the laws of the State of New Mexico. The purpose of the Association is to provide domestic water service to its members in the Highland Meadows Estates Subdivision. The Association has a five-member Board of Directors. The members will elect new directors after the expiration of the current directors' initial terms of service. The Board of Directors will oversee the operation of the Association. The Association will be governed according to the Certificate of Association and Bylaws. The owners have installed all existing infrastructure. Any additional infrastructure will be installed by the Cooperative.

The Membership fee is \$300, and the member must pay \$1000 for the cost of hook up to the Association's system for each lot owned by a member along with a cost per linear foot, to be determined by the Board of Directors. Additionally, each member will be charged for services from the Association monthly, including cost of water, which amount shall be determined by the Board of Directors. The Board of Director's has the right to adjust that fee as conditions change.

The Association reserves the right to not grant membership due to the distance from existing water lines.

STATE OF NEW MEXICO)
) S.S.
COUNTY OF VALENCIA)

ACKNOWLEDGED before me this 18th day of June, 2001, by
Gail Major, M.S. Major, Jr. and Janis Peterson.

Tieca Walker
Notary Public

My commission expires April 7, 2002

STATE OF NEW MEXICO)
) S.S.
COUNTY OF Valencia)

ACKNOWLEDGED before me this 28th day of June, 2001, by
AnaBel Trevino.

Tieca Walker
Notary Public

My commission expires April 7, 2002



Attorney General of New Mexico
CONSUMER PROTECTION DIVISION

PATRICIA A. MADRID
Attorney General

STUART M. BLUESTONE
Chief Deputy Attorney General

November 16, 2006

GLENN R. SMITH
Deputy Attorney General

Malcolm S. Major, Jr.
Major Land Company
P.O. Box 1299
Los Lunas, N.M. 87031

Re: *Highland Meadows Estates*

Dear Mr. Major:

The New Mexico Attorney General's Office, Consumer Protection Division, has received a complaint against your firm from the New Mexico Environment Department. A copy of that complaint, in the form of a letter dated November 16, 2006, is attached.

In New Mexico, false or deceptive advertising is prohibited under both the False Advertising Act, NMSA 1978, § 57-15-1, *et seq.*, as well as under the Unfair Trade Practices Act, NMSA 1978, § 57-12-1, *et seq.*. The False Advertising Act defines "false advertising" as "advertising, including labeling, which is misleading in any material respect...." § 57-15-2. The Unfair Trade Practices Act prohibits unfair or deceptive business practices in the sale of improved real property, including by failing to disclose material facts when nondisclosure may, tends to or does mislead or deceive. § 57-12-8(B) and § 57-12-2(D)(14). The Attorney General has the authority to seek restitution for consumers injured by false or deceptive advertising, as well as injunctive relief. § 57-12-8(B).

We are in possession of a photograph in which your business advertises Highland Meadows lots for sale "with water." The New Mexico Environment Department complains that you do not disclose that the water is undrinkable and that it damages water treatment systems. We also understand that you do not disclose the substandard conditions of the Highlands Meadows Estates system, despite your having created it and your apparent actual knowledge of its condition. Any or all of these nondisclosures may constitute false advertising or unfair or deceptive advertising, depending on all of the facts.

Our normal procedure is to inform a business that a complaint has been filed against it, then allow a response period of ten days. You are requested to provide a written answer to the Department's complaint, including providing

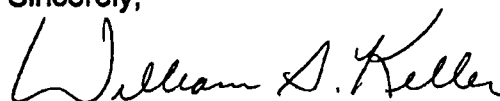
whatever documents you believe may be useful to the Consumer Protection Division in determining whether a violation of either of the referenced statutes has occurred. We specifically request that you provide us with copies of all printed or electronic advertisements, regardless of form (including brochures and web pages), that you have created or use in your business. Please also provide us with copies of any and all disclosure statements related to the Highlands Meadows lots that you may have used at any time in the last ten years.

Following your response, or if you fail to respond, this Division will take whatever action it may deem appropriate under the circumstances, including, but not limited to, enforcement.

You or your attorney are welcome to contact me at your convenience within the ten day response period. We will expect to hear from you on or before November 30, 2006.

Thank you.

Sincerely,

A handwritten signature in black ink that reads "William S. Keller". The signature is fluid and cursive, with the first name "William" being the most prominent part.

William S. Keller
Assistant Attorney General
505-827-6360

cc: New Mexico Environment Department,
Carol Parker, Esq.

Joel Cruz-Esparza, Esq.
Director, Consumer Protection Division



BILL RICHARDSON
GOVERNOR

State of New Mexico
ENVIRONMENT DEPARTMENT
Office of General Counsel
Harold Runnels Building
1190 St. Francis Drive, P.O. Box 26110
Santa Fe, New Mexico 87502-6110
Telephone (505) 827-2855



RON CURRY
SECRETARY

DERRITH WATCHMAN-MOORE
DEPUTY SECRETARY

TRACY HUGHES
GENERAL COUNSEL

November 16, 2006

Mr. William Keller, Assistant Attorney General
Consumer Protection Division
NM Attorney General's Office
P.O. Drawer 1508
Santa Fe, NM 87504-1508

Re: Highland Meadows Consumer Protection Referral

Dear Mr. Keller:

I am writing on behalf of the Drinking Water Bureau of the Environment Department (Department) to ask your help with a potential consumer protection issue. The Department has an enforcement case against a small mutual domestic water system in Valencia County known as Highland Meadows. The system has numerous drinking water violations and the Department has ordered the system to suspend additional connections until certain legal requirements are satisfied. The consumer protection aspect of the case is that land sales are allegedly occurring without proper disclosure.

Mr. Buddy Major (aka Malcolm S. Major, Jr.), owns hundreds of lots that were subdivided in 1971. Mr. Major advertises those lots as being "with water." See attached photo of sign. He allegedly does not tell people that the water is undrinkable. As a result, people buy and move in only to find out too late about the poor water quality. The water is "undrinkable" due to very high levels of sulfate, dissolved solids and hardness, not due to bacteriological contamination. As a matter of law, the Environment Department's drinking water requirements do not address palatability. The physical "system" that Mr. Major created does not comply with the Safe Drinking Water Act requirements.

Everyone I have talked to in Highland Meadows has a water story—corroding pipes and water that smells horrible and clogs the best systems that Culligan offers. People have tried various treatment systems but ultimately have had to resort to hauling water after the treatment systems failed. If you ask, people say they don't think anyone actually "drinks" the water; it's that bad. Numerous residents have stated that they were not told of the water quality problems before they bought their property; they just assumed the water would be drinkable. Even though people don't "drink" the water, the system is considered a drinking water system because it is piped into homes for domestic use. Thus, the Highland Meadows water system has the expense of complying with the drinking water rules despite the fact that people can't drink the water.

Mr. Major is very dissatisfied with the suspension of additional connections. He told me that he "has to" continue to sell lots. I have explained to Mr. Major that the Department has no interest in permanently preventing additional service connections, but the system needs some time to bring itself into compliance with legal requirements to protect public health and safety. Mr. Major has stated that if he cannot connect people to the Highland Meadows system he will just create a new system. Oddly enough, he told me three times in that conversation, "Everyone out here knows the water is not drinkable." If that's the case, he ought to put that on his sign and tell people that before they buy property.

In the Department's view, Mr. Major's sign constitutes false or misleading advertising or an unfair trade practice. He's selling "lots," suggesting a small parcel, not large tracts of land for ranching or farming. These lots come with both water and electricity, again suggesting residential use. His sign even states that he provides "land home packages" removing any doubt that the "water" advertised on the sign is intended for residential use. I doubt most reasonable people would expect undrinkable water for residential use. Selling residential lots "with water" but failing to disclose that the water is undrinkable would therefore be misleading and violate consumer protection laws.

There also appear to be violations of other state laws at Highland Meadows. Based on our most recent information, Mr. Major was selling lots with well share agreements at least as early as 1998 although it appears that those wells may never have been authorized by the State Engineer's Office.

On April 20, 2000, Mr. Major created a Water Cooperative, stating in the incorporation papers that it was to provide water for "domestic purposes." Mr. Major then transferred his "system," i.e., the wells that had been used for well shares and associated piping and a storage tank to the Cooperative. Mr. Major allegedly committed to paying all of the legal expenses for getting the wells properly permitted at the State Engineer but that apparently was never done. None of the wells were metered as is generally required for well share agreements.

The Cooperative's bylaws limited membership to those persons who "are in need of water for domestic or commercial purposes" in the Highland Meadows area. Board Members were limited to those who were members of the Cooperative. While the incorporators apparently owned property in the vicinity of Highland Meadows, none of the persons who formed the Cooperative appear to have ever received water from Mr. Major's "system;" this calls into question whether they had any need of water and therefore whether they could have lawfully been members or Board Members of the Cooperative.

Mr. Major's system violated a long list of drinking water requirements, e.g., some of the pipes were not buried, the wells had no sanitary seals, and the tank had no screens to keep out vermin. Mr. Major never sought the Department's prior approval for constructing a water system which was required under the regulations in effect at that time. Had Mr. Major done so, the Department would have required that the infrastructure meet drinking water standards. Instead, the "system" Mr. Major created constitutes a public nuisance.

The Cooperative of which Mr. Major was President, then transferred the "system" to the residents, organized as a Sanitary Projects Act Association. None of the incorporators and Board Members of the Cooperative joined the Sanitary Projects Act Association. This again suggests that those Board Members never had any need for water in the first instance and could not properly have formed the Cooperative.

As a result of these numerous illegalities, the residents are saddled with the responsibility for operating a substandard public water system that serves undrinkable water from illegal wells. This situation has the potential to create a virtual colonia thirty-five miles outside of Albuquerque and deceive unknowing consumers.

There are, at present, 28 service connections but if Mr. Major persists in his misleading sales practices, the problem will grow since he has hundreds of lots to sell. The Department is presently compiling a detailed estimate of how much it will cost to bring the "system" into compliance with regulatory standards and make the water drinkable; it will probably be \$750,000

for the persons presently served by the system and if the system is to serve its proposed service area, the Department estimates that the required infrastructure will cost millions of dollars.

The Department respectfully requests that the Attorney General investigate Mr. Major's sales practices to determine whether consumers are receiving proper disclosure about the condition of the water and the water system in the Highland Meadows area. The Department is also planning legal action against Mr. Major.

Thank you for your assistance. Please do not hesitate to call me if you have any questions.

Sincerely,



Carol M. Parker
Assistant General Counsel
505-827-8891
Carol.parker@state.nm.us

Enclosure

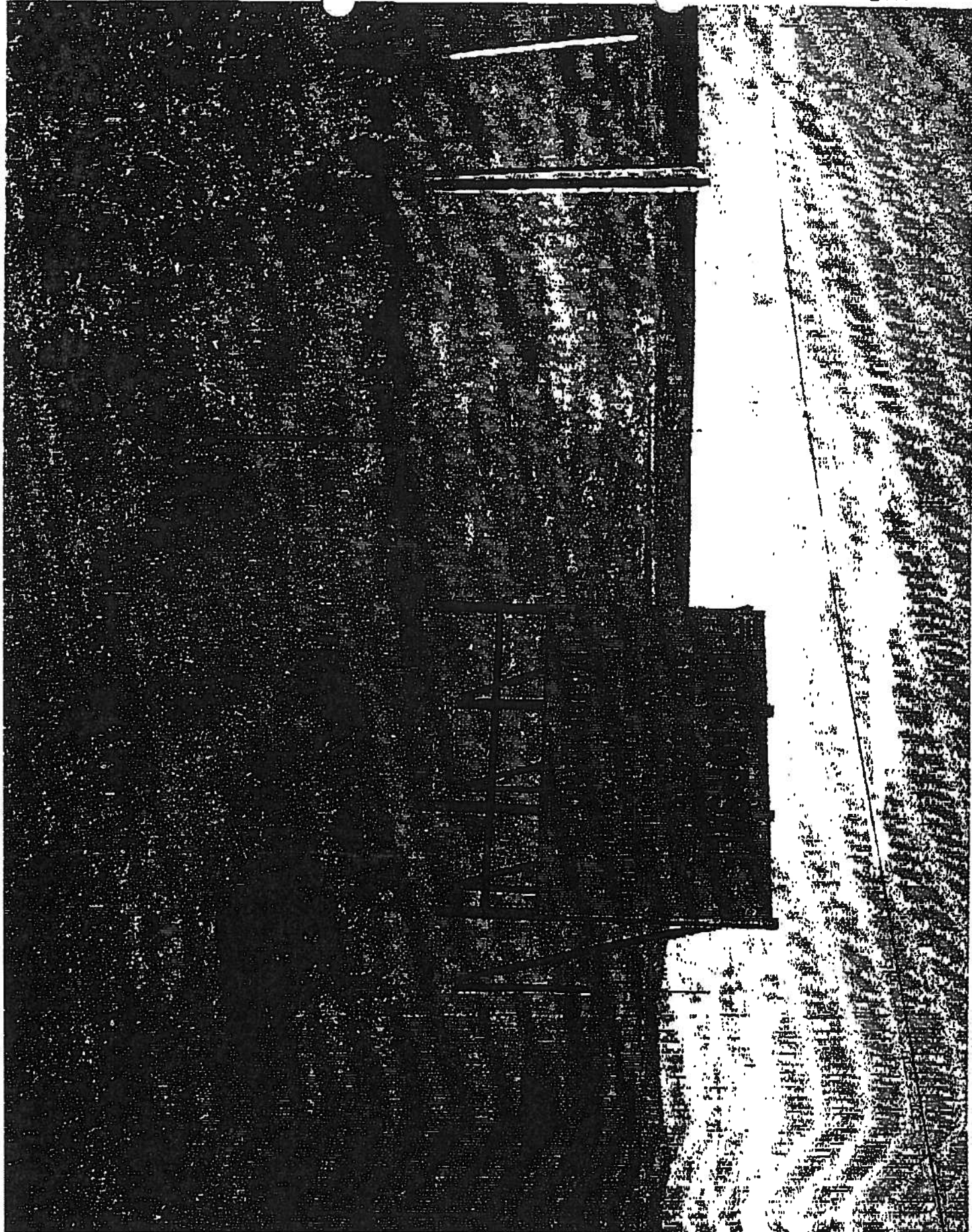




EXHIBIT
E



**REALTORS® ASSOCIATION OF NEW MEXICO
REAL ESTATE CONTRACT**

WARNING: THIS IS NOT A PURCHASE AGREEMENT. This Real Estate Contract (this "Contract") has the effect of actually transferring equitable title to real estate.

This form does not contain disclosures required by Federal Reserve Regulation Z and Consumer Protection Act "Truth in Lending." Use this form only in conjunction with another instrument incorporating the required disclosures or for transactions exempt from the Act.

THIS CONTRACT IS MADE on April 12, 2007 (the "Effective Date"), by
Three Bar Land Company, LLC. ("Seller")
whose address is P.O. BOX 1299, Los Lunas, New Mexico 87031
and Ofelio Gallardo-Gonzalez and Nadia Gutierrez-Najera ("Buyer")
whose address is HC 77, BOX 20, Laguna, New Mexico 87026
who is purchasing as: ☐ TENANTS IN COMMON ☒ JOINT TENANTS ☐ OTHER _____
Seller and Buyer agree:

1. SALE: Seller sells to Buyer the following described real estate (the "Property"):

Highland Blvd. Laguna
Address City
Highland Meadows Estates, Unit 1, 5 1/2 of Lot 33
Legal Description
or see metes and bounds description attached as Exhibit n/a, Valencia County, New Mexico.
Subject to reservations, restrictions, covenants, easements of record, taxes and assessments and the "Prior Obligations" (the "Permitted Exceptions").

2. PRICE AND PAYMENT.

A. BUYER WILL PAY:

CONTRACT SALE PRICE (Total of Down Payment, Assumed Prior Obligations \$22,000.00
and Balance Due Seller)
(Twenty-Two Thousand Dollars & no/100's Dollars)

(1) DOWN PAYMENT \$ 5,000.00
(Five Thousand Dollars & no/100's Dollars)

(2) ASSUMED PRIOR OBLIGATIONS \$ 0
(n/a Dollars)

(3) BALANCE DUE SELLER (including wrapped Prior Obligations) \$17,000.00
(Seventeen Thousand Dollars & no/100's Dollars)

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PAYABLE AS FOLLOWS:

\$17,000.00 to be amortized over 7 Years at an 8% Interest Rate for a monthly payment amount of \$264.98

Property Taxes are: \$36.69 per year, the monthly pro-rated amount is \$3.06 this amount is to be escrowed each month to pay the property taxes to Valencia County Treasurer's office.

The Total Monthly Payment is: \$268.04 with the first payment due on: THE 16th OF MAY, 2007.

HUD DISCLOSURE WAS ISSUED TO THE BUYER.
* BUYER MUST CONTACT THE HIGHLAND MEADOWS WATER CO-OP FOR WATER SERVICE.

If not sooner paid pursuant to the terms of this Contract, the entire Balance Due Seller shall be due and payable 30 days from the date of the first payment.

* SELLER IS NOT GUARANTEEING OR IMPLYING THAT HE CAN PROVIDE WATER SERVICE.

B. INTEREST ON BALANCE DUE SELLER. Except as specifically stated to the contrary in Paragraph 2A, the Balance Due Seller will bear interest at the rate of 8 % per year (the "Interest Rate") from the Effective Date, and the payments will be paid to Escrow Agent (named below) and continue until the entire Balance Due Seller plus any accrued interest due to Seller is fully paid.

C. LATE CHARGES AND COLLECTION COSTS. Buyer will pay all late charges and all collection costs incurred on all Prior Obligations paid directly by Buyer or through Escrow Agent. A late charge of \$ 75.00 will be due and payable by Buyer on any payment that is over 15 days overdue. Late charges will be paid to Seller as additional interest.

D. APPLICATION OF PAYMENTS ON BALANCE DUE SELLER.

(1) Initial only one of the following two paragraphs.

 PERIODIC INTEREST. Payments received by Escrow Agent, excepting prepayments, will be applied to regularly scheduled installments in the order in which payments are due and will be credited as though the payments had been made on their respective due dates, first to interest and then to the Balance Due Seller.

OOX DAILY INTEREST. Payments will be applied as of the date of receipt by Escrow Agent, first to accrued interest then to the Balance Due Seller.

(2) All payments will be assumed to be regular payments, and not prepayments, unless otherwise specified by Buyer in writing at the time of delivering the payments to Escrow Agent. Buyer may prepay all or any part of the Balance Due Seller. Any prepayment will be credited first to accrued interest, then to the Balance Due Seller, and then to Prior Obligations assumed by Buyer. Notwithstanding any prepayments, Buyer will make the next regularly scheduled payments.

3. PRIOR OBLIGATIONS.

A. Each of the following Prior Obligations is currently outstanding on the Property:

Type of Lien or Obligation	Holder	Loan Number	Recording Data
1 <u>MORTGAGE</u>	<u>AG-New Mexico, FCS, PCA</u>		
2			
3			

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B. IF ANY PRIOR OBLIGATIONS ARE CURRENTLY OUTSTANDING ON THE PROPERTY, INITIAL ANY OF THE FOLLOWING PARAGRAPHS WHICH APPLY. ONLY THE INITIALED PARAGRAPHS WILL APPLY. Seller and Buyer appoint Escrow Agent as their Attorney-in-Fact for the limited purpose of obtaining account information as needed from the holders of the Prior Obligations.

(1) ASSUMED PRIOR OBLIGATIONS.

 (a) PAID THROUGH ESCROW. Buyer assumes and agrees to pay and perform the Prior Obligations in accordance with their terms. Buyer will make the required payments on the Prior Obligations, together with the required payments on this Contract, to Escrow Agent, which will remit the payments to the proper payee. Buyer will advise Escrow Agent of any change in the amount of the payment due on any Prior Obligations. When the Balance Due Seller is fully paid, this Escrow will terminate and Buyer will make the required payments on the Prior Obligations directly to the proper payee. This Paragraph applies to the following Prior Obligations:

 (b) PAID DIRECTLY BY BUYER. Buyer assumes and agrees to pay and perform the Prior Obligations in accordance with their terms. Buyer will make the required payments on the Prior Obligations directly to the proper payee. If Buyer fails to pay the required payments before they become delinquent, Seller may pay the payment. Payment by Seller will not be deemed a waiver of Buyer's default, and the amount paid by Seller will be immediately due and payable to Seller and will bear interest from date of payment by Seller until paid at the highest Interest Rate provided in Paragraph 2B. This Paragraph applies to the following Prior Obligations:

(2) WRAPPED PRIOR OBLIGATIONS.

CCX **(a) PAID THROUGH ESCROW.** Buyer does not assume and does not agree to pay the Prior Obligations. All required payments due on the Prior Obligations will be remitted by Escrow Agent to the proper payee out of the payments on the Balance Due Seller. If Buyer fails to pay the required payments before they become delinquent, Seller may pay the payment. Payment by Seller will not be deemed a waiver of Buyer's default, and the amount paid by Seller will be immediately due and payable to Seller and will bear interest from the date of payment by Seller until paid at the highest Interest Rate provided in Paragraph 2B. Upon payment of the Balance Due Seller, Seller will obtain a release of the Property from the lien of the wrapped Prior Obligations. This Paragraph applies to the following Prior Obligations: AG - NEW MEXICO, FCS, PCA

 (b) PAID DIRECTLY BY SELLER. Buyer does not assume and does not agree to pay the Prior Obligations. Seller will be responsible for all payments required under the Prior Obligations and will keep the Prior Obligations in good standing. Upon payment of the Balance Due Seller, Seller will obtain a release of the Property from the lien of the wrapped Prior Obligations. This Paragraph applies to the following Prior Obligations:

4. BUYER TO MAINTAIN PROPERTY, PAY INSURANCE, TAXES AND PAVING LIENS; AND SELLER'S RIGHTS.

A. MAINTENANCE. Buyer will maintain the Property in as good condition as on the Effective Date, excepting normal wear and tear. Buyer will obey all applicable laws governing the use of the Property, including but not limited to environmental laws.

B. INSURANCE. Buyer will keep the insurable improvements upon the Property insured against the hazards covered by fire and extended coverage and public liability insurance, with an insurance company satisfactory to Seller in the amount of:

(1) not less than the greater of the replacement cost of the improvements or the Balance Due Seller, for the benefit of Buyer and Seller as their interests may appear, as to fire and extended coverage; and

(2) not less than \$ n/a to vacant land as to liability with Seller as additional named insured, and Buyer will furnish a copy of the insurance policy or certificate of the insurance policy to Seller annually before expiration of existing insurance stating that coverage will not be canceled or diminished without a minimum of 15 days prior written notice to Seller.

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13. OTHER.

CAUTION: PLEASE READ THIS ENTIRE CONTRACT BEFORE SIGNING. IF YOU DO NOT UNDERSTAND THIS CONTRACT, PLEASE CONSULT YOUR ATTORNEY.

Seller M.S. Buddy Major, Jr. 4-12-2007 11:37am
Date Time
Seller _____ Date Time
Buyer Ofelio GALLARDO-GONZALEZ _____ Date Time
Buyer NADIA GUTIERREZ-NAJERA _____ Date Time

ACKNOWLEDGEMENT FOR NATURAL PERSONS

STATE OF NEW MEXICO)
COUNTY OF _____)
This instrument was acknowledged before me on _____, 2007 by
Ofelio Gallardo-Gonzalez and Nadia Gutierrez-Najera
My commission expires: _____
NOTARY PUBLIC

STATE OF NEW MEXICO)
COUNTY OF Valencia)
This instrument was acknowledged before me on _____, 2007 by
M.S. "Buddy" Major, Jr.
My commission expires: _____
NOTARY PUBLIC

ACKNOWLEDGEMENT FOR ENTITIES

STATE OF NEW MEXICO)
COUNTY OF _____)
This instrument was acknowledged before me on _____, _____ by
_____ of _____
a _____
My commission expires: _____
NOTARY PUBLIC

STATE OF NEW MEXICO)
COUNTY OF _____)
This instrument was acknowledged before me on _____, _____ by
_____ of _____
a _____
My commission expires: _____
NOTARY PUBLIC